COMPENDIUM OF GRIEVANCE ARBITRATION DECISIONS

1986

Manitoba
Labour Board

MG-14005

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FILE NO. AA85-05-008

EMPLOYER:	Winpak
UNION:	Winpak Employees' Association
BOARD:	P.W. Schulman, Q.C. - Chairperson D.E. Sutton - Nominee for the Employer M. MacKay, Q.C. - Nominee for the Union
APPEARANCES:	H.G. Piercy - for the Employer S. Green, Q.C. - for the Union
ISSUES:	(1) Discharge: Work Performance: Incompetence 7:3510 (2) Unsuitability 7:3530
DECISION RENDERED:	May 8, 1985
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Grievor had worked for the Company for about three years, and had held five separate jobs at the plant during his employment. The Company terminated the grievor's employment, claiming that the latter was incapable of doing the job of Slitter Helper, the last job he had held, according to Company requirements. According to the Company, the grievor was slow and lethargic, and often fell behind in his work. In addition, he was frequently away from his station, which made it necessary for co-workers to "pick up the slack" left by the grievor. The grievor apparently had been warned about his poor work performance, but showed no signs of improving same. The Company claimed that the grievor had been given ample opportunity to prove himself, having held five positions with the Company. At those positions the grievor received less than rave evaluation regarding his work. As far as the Company was concerned, there were no more positions for the grievor to fill. The grievor grieved that he was discharged unjustly from his job.

AWARD: The grievance failed. The Board concluded that the grievor's performance on the job indeed failed to meet reasonable standards required by the Employer and that the Company, in fact, did exhaust all avenues open to it where the grievor was compatible with the system of work at the plant. The Board was mindful of the contention that the grievor did not know that his job was in jeopardy and that the latter needed a "break". However, the finding was that the Company had just cause for terminating the employment of the grievor. To reinstate the latter to his employment, a majority of the Board felt, would be doing a disservice to the Company.

DISSENT: M. MacKay Q.C. - Nominee for the Union - Mr. MacKay pointed out that there was no culminating evidence to which to point. In his conclusion, the grievor's termination was based on

his limited ability and not on any impropriety. Therefore, the termination was unjust.

AUTHORITIES: Simmons v The Government of Manitoba, 28 Manitoba Reportr (2nd) decision of May 14, 1983.

FILE NO. AA85-05-009

EMPLOYER:	University of Manitoba
UNION:	Association of Employees Supporting Education Services
ARBITRATOR:	P.W. Schulman, Q.C.
APPEARANCES:	W.D. Hamilton - for the Employer R. Tonn/Y.M. Henteleff, Q.C./A. Yost - for the Union
ISSUES:	(1) Discipline: Suspension (under 30 days): Sexual Harassment 7:3580 (2) Burden of Proof 7:2300 (3) Evidence: Relevance 3:4200 (4) Evidence: Procedure for Receiving 3:4410
DECISION RENDERED:	May 15, 1985
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Following a twenty-day suspension without pay, the grievor grieved that he had been suspended unjustly without cause by the Employer. The suspension followed allegations that the grievor, over a period of time, had put his hand on a female co-workers's leg, had grabbed/held her hand, and had made objectionable remarks of a sexual nature to her. In addition, he allegedly had blown smoke in the face of the female co-worker.

There was an allegation that the grievor, on a previous occasion, had committed an act of a nature similar to one mentioned above. Concern was raised regarding admissibility of evidence regarding the prior allegation. It was decided that the proceedings should be divided into two phases. In phase one the issue to be decided was whether or not, based on allegations relevant to the suspension, there was indeed cause for discipline. In the first phase the arbitrator ruled that evidence of the prior event would not be admitted. Phase two, in essence, would deal with the grievance in question, if cause for discipline was established. Evidence relating to the previous allegation then would be admitted. This award then is in respect to phase one.

AWARD: The Arbitrator found that, according to phase one cause for discipline had been established. In the Arbitrator's opinion, the conduct of the grievor on two occasions had exceeded the bounds of what was permissible at the University. Matters relevant to phase two then would be heard.

AUTHORITIES: Numerous authorities were cited by counsel during the arbitration.

FILE NO. AA85-11-007

EMPLOYER:	Burns Meats Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
BOARD:	P.W. Schulman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer N. Thibault - Nominee for the Union
APPEARANCES:	G.D. Parkinson - for the Employer G. Mendelson and R. Tonn - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Seniority: Non-Unit Employee 6:1120 (3) Arbrogation of Seniority Rights 7:4230
DECISION RENDERED:	November 25, 1985
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor had worked in Prince Albert from 1950 to 1967 at one of the Company's plants, and in 1967 he was promoted to Foreman at that plant. He then was transferred to Edmonton in 1975, as Foreman at the Edmonton plant. Some time in 1979 the grievor was transferred to the Winnipeg plant as Foreman, and held that position until 1984 when he was demoted to Beef Cooker, Labour Grade II. Upon demotion the Company assigned to the grievor a seniority date of 1967. Prior to 1984 the grievor never was included on the payroll at the Winnipeg plant. The Union filed a policy grievance alleging that the Company violated Article 10 of the collective agreement, in that the latter was recognizing the seniority of the grievor not defined within the Winnipeg plant or in the collective agreement. According to the Union, the grievor's seniority at the Winnipeg plant began in 1984, not 1967.

AWARD: The grievance was sustained. The Board declared that the grievor did not acquire seniority rights at the Winnipeg plant until 1984. In making this declaration, the Board examined and

interpreted the terms "plant", "employee", and "seniority", as defined in the collective agreement. Crucial to the above declaration was that during the period 1950 to 1967 and up until 1984, negotiations with regard to various bargaining units in various plants owned by the Company took place through voluntary arrangements on a national level towards concluding a master agreement that would govern individual bargaining units. The Board concluded that "plant" was specific to the geographic location, and in this case "plant" referred to the Winnipeg plant. It concluded also that according to the evidence, the grievor first became an employee of the Winnipeg plant in 1984. Regarding the question of seniority determination, the Board ruled that the grievor did not acquire seniority in Winnipeg until 1984, thus disagreeing with the Company's position that the grievor's service with the Company should be the major consideration and not the specifics of where that service was rendered.

AUTHORITIES: Re United Steelworkers of America and Westeel-Rosco Ltd. (1969) 20 L.A.C. and 202 (J.F.W. Weatherill); Re Sklar Furniture Ltd. and Upholsterers' International Union, Local 50 (1977) 16 L.A.C. (2d) 275 (H.D. Brown); and Re International Chemical Workers' Union, Local 603, and Brantford Roofing Co. Ltd. (1958) 9 L.A.C. 132 (W.S. Lane C.C.J.).

FILE NO. AA86-01-001

EMPLOYER:	Health Sciences Centre
UNION:	Canadian Union of Public Employees, Local 1550
BOARD:	D.E. Bowman, Q.C. - Chairperson W.D. Hamilton - Nominee for the Employer M.L. Brooks - Nominee for the Union
APPEARANCES:	W.S. Gardner, Jr. - for the Employer R. Tonn - for the Union
ISSUE:	Senior Employee with Required Ability 6:3210
DECISION RENDERED:	January 6, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor alleged that the posted position of Operating Room Assistant IV, a position he felt he was qualified for, was awarded to a person with less seniority than himself. The collective agreement stipulated that the most senior applicant for a position is entitled to it, provided he has the required qualifications.

The Hospital took the position that the grievor lacked the necessary qualifications for the position. He did not possess previous experience as an O.A. IV.

AWARD: Evidence presented at the hearing indicated that the grievor met the requirements for the position. Therefore, if he was the most senior applicant for the position (which he was not), he should have received it. The Board ordered the Employer to offer the position to the most senior applicant for the job. If that applicant declined the offer, then the grievor must be awarded the position.

AUTHORITIES: Re Reynolds Aluminum and International Molders 5 L.A.C. (2d) 251 (Schiff); Re Inglis Ltd. and United Steel Works 16 L.A.C.(2d) 227 (O'Shea).

FILE NO. AA86-01-002

EMPLOYER:	St. Boniface General Hospital
UNION:	Manitoba Food and Commercial Workers Union, Local 832
ARBITRATOR:	W.D. Hamilton
APPEARANCES:	C. Malburg - for the Employer A.R. McGregor, Q.C. - for the Union
ISSUES:	(1) Senior Employee with Required Ability 6:3210 (2) Language Facility 6:3350
DECISION RENDERED:	January 13, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor alleges that she was denied unjustly the position of full-time Inquiry Clerk, a position for which she felt she was qualified, and, hence, to which she was entitled under Article 16 of the collective agreement (seniority provisions).

The Employer contended that a requirement for the position was fluency in both French and English. As the grievor was not bilingual, she did not possess the required qualifications for the position. Therefore, she was not considered for the position. Further, through a Labour/Management Committee, the Union agreed to review the qualification requirements for existing jobs, established in the French language requirement.

The Union contended that while the fluency in French requirement was agreed to during the committee process, it was their understanding that it related only to future applicants. Existing

unilingual English speaking employees would be deemed qualified in regards to the French fluency requirement for any positions or transfers which arose in the department. If they were not, they would be frozen forever in their current positions, and could not advance within the department.

AWARD: The Arbitrator concluded that there was insufficient evidence adduced by the Union to support its contention that an understanding between the parties had been reached whereby the French fluency requirement would not apply to existing employees seeking a promotion or transfer. The grievance was dismissed.

AUTHORITIES: Reynolds Aluminum Company of Canada Ltd. and International Molders and Allied Workers Union, Local 28 (1974) 5 L.A.C. (2d) 251 (Schiff); and Re St. Catherines General Hospital and Service Employees International Union, Local 204 (1975) 10 L.A.C. (2d) (Adams).

FILE NO. AA86-01-003

EMPLOYER:	Boeing of Canada Ltd.
UNION:	International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.), Local 2169
ARBITRATOR:	P. Teskey
APPEARANCES:	R. Hansell, Q.C./B. Bowman - for the Employer H. Mitic - for the Union
ISSUE:	Discipline: Discharge: Theft 7:3310
DECISION RENDERED:	January 16, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was dismissed from employment as a truck driver. The Employer alleged that the grievor had stolen gas from the Company. In light of his employment record which included four warnings for various offences, the decision was made to discharge the grievor. The grievor denied any wrongdoing.

AWARD: The Arbitrator, upon examination of the material presented at the hearing, concluded that there was insufficient evidence to support the Employer's allegation of theft. The grievor was reinstated in his former position.

AUTHORITIES: Re British Columbia Telephone Company and Telecommunications Workers' Union (1978), 18 L.A.C. (2d) 255; Palmer, Collective Agreement Arbitration in Canada.

FILE NO. AA86-01-004

EMPLOYER: Portage La Prairie School Division

UNION: Portage La Prairie Teacher's Association No. 24

BOARD: M.H. Freedman, Q.C. - Chairperson
H. Piercy - Nominee for the Employer
D. Shrom - Nominee for the Union

APPEARANCES: R. Simpson - for the Employer
M. Myers, Q.C. - for the Union

ISSUES: (1) Compensation: Leave of Absence 8:3125
(2) Object of Construction: Intention of the Parties 4:2100
(3) Aids to the Interpretation of the Collective Agreement 4:2200

DECISION RENDERED: January 22, 1986

EXPEDITED ARBITRATION: No

CIRCUMSTANCES: Two employees requested, but were denied, sabbatical leave. A grievance alleging a violation of Article 10:05 of the collective agreement was initiated. Article 10:05 stated:

> Sabbatical leave shall not be granted to more than 1% of the teaching staff in any one school year.

The Union argued that Article 10:05 constituted a mandatory provision for sabbatical leave. The Employer could not deny eligible applicants their requested leave. Sabbatical leaves were a benefit for which they were bargained and obtained at some cost. To interpret Article 10:05 as being totally discretionary in the hands of the Employer would be inconsistent with the nature of the bargaining arrangement.

The Employer argued that the clear and simple meaning of Article 10:05 is that there is a maximum number of teachers to whom sabbatical leave must be granted in any school year. It did not mean that sabbatical leave must be granted to all eligible applicants. Further, the term "granted", as used in Article 10:05, expressed the concept of accession, allowance, or permission rather than the concept of entitlement.

AWARD: The Board concluded that the Employer's interpretation of Article 10:05 was correct. The grievance was dismissed.

DISSENT: D.M. Shrom - Nominee for the Union - The dissenting Nominee agreed that Article 10 provided a maximum limit to the granting of sabbatical leaves in a school year. His

interpretation of Article 10 was that it provided for sabbatical leave as a mandatory entitlement. Mr. Shrom's conclusion was that the majority interpretation of Article 10 was inconsistent with various rules or cannons of contract construction.

AUTHORITIES: Boarelli v Flannigan, Ontario Court of Appeal (1973) 36 D.L.R. (3rd) 4 at p. 14; Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and Associated Beer Distributors (Schulman, Houston, Kostyra) Dec. 1979; Fort Garry School Division (and its teachers, Foster, Myers & Williams) Dec. 1979 (unreported); Moriss v Winter (1930) 1 K.B. 243 at 247.

FILE NO. AA86-01-005

EMPLOYER:	Perth Services Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	W.D. Hamilton
APPEARANCES:	R. Literovich - for the Employer G. Mendelson - for the Union
ISSUES:	(1) Discipline: Discharge: Insubordination: 7:3600 (2) Essential Ingredients: 7:3612 (3) Reasonableness of Penalty: 7:4300
DECISION RENDERED:	January 27, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor was dismissed from employment allegedly for refusing to comply with a reasonably worded request that she do a job which was well within her ability to perform. The Employer argued that the grievor had received a previous warning for insubordination and had been told that another such incident would result in dismissal.

AWARD: The Arbitrator concluded that the grievor had engaged in conduct warranting discipline. However, the discharge was considered too harsh of a penalty to impose. A five-month suspension was substituted.

AUTHORITIES: Canadian Labour Arbitration (2nd ed.) at p. 437 - 438; Collective Agreement Arbitration in Canada (2nd ed.) at p. 337.

FILE NO. AA86-01-006

EMPLOYER:	Manitoba Museum of Man and Nature
UNION:	Manitoba Government Employees' Association
BOARD:	S.G. Sigurdson, Q.C. - Chairperson R.A. Simpson - Nominee for the Employer S. Devine - Nominee for the Union
APPEARANCES:	J.M. Christiansen - for the Employer B. Havelock - for the Union
ISSUE:	Changes in Job Function 5:2410
DECISION RENDERED:	January 27, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor alleged that since the introduction of a display writer (computerized typewriter) her duties and responsibilities changed to such an extent that her position (Administrative Secretary) no longer was included properly with group IV positions. She sought a reclassification to a group VI level position. The grievor claimed that her additional responsibilities included a more active role in committee functions and assisting the training of others on the equipment. Further, she felt that more responsibility and independence were associated with her position than with other positions within the same classification. The extent to which she used the equipment was substantially greater than its usage in other positions.

The Employer testified that the technology had permitted more tasks to be done in less time, resulting in a somewhat expanded scope with some limited expansion of duties. However, the grievor's work remained secretarial in nature. Further, the secretarial nature of the work performed by the grievor was not consistent with the duties and responsibilities associated with positions classified at a group VI level.

AWARD: The grievance was dismissed. The Board concluded, upon examining the evidence presented at the hearing, that while the new technology changed the manner in which the duties of the grievor were performed, it did not change the duties to a significant degree. The essential secretarial nature of the work remained unchanged. As well, it appeared that similiar changes had occurred in other group IV positions where new technology had been introduced.

DISSENT: S. Devine - Nominee for the Union - Ms Devine concluded that there were significant changes to the grievor's position when the display writer was introduced. Additional skill and knowledge were required for the position. While a reclassification to a

group VI level was not appropriate, the Board should have considered a reclassification to a group V position. The grievance should be remitted to the parties for further consideration, with possible reclassification of the grievor to group V.

AUTHORITIES: RE Windsor Public Utilities Commission and IBEW, Local 911, 7 L.A.C. (2d) 381: Re U.S.W. and Durham Bush (Canada) Ltd. 1969, 20 L.A.C. 419; Re Assenault and the Queen in Right of New Brunswick 27 L.A.C. (2d) 358 at p. 310; Re International Association of Machinists, Lodge 717, and Hawker Siddley Canada Ltd., Vol. 14 L.A.C. p. 104; and others.

FILE NO. AA86-01-007

EMPLOYER:	St. Boniface Hospital
UNION:	Manitoba Food and Commercial Workers, Local 832
ARBITRATOR:	G. Mitchell
APPEARANCES:	C. Malburg - for the Employer D. Primeau - for the Union
ISSUES:	(1) Senior Employee with Required Ability 6:3210 (2) Disciplinary Records 6:3310
DECISION RENDERED:	January 31, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor's applications for the posted positions of Orderly, Geriatric Ward, were denied by the Employer (an alleged violation of Article 16.02 of the collective agreement).

The Employer argued that while the grievor had the necessary qualifications for the position by virtue of an agreement made between it, a predecessor union, and the grievor in 1981, the grievor had been disqualified permanently from applying for positions in patient care areas. At that time, through continual misconduct the grievor had proven his inability to do the work.

The Union argued that it was not party to such an agreement as that referred to by the Employer. Even if such an agreement existed, it was not reasonable to conclude that it acted as a permanent bar to patient care jobs. The Union further objected to the admission into evidence of the grievor's disciplinary record for the period 1977-79.

AWARD: The Arbitrator concluded that even if an agreement designed to bar the grievor from access to patient care jobs existed, it could not be used against the grievor forever unless it was negotiated into the collective agreement.

Further, while his past disciplinary record could not be completely ignored, the fact that the grievor had kept himself out of trouble for an extended period of time indicated that the time had come to give him another chance.

The Employer was ordered to offer the grievor the next vacant position as an Orderly in the Geriatric Ward.

AUTHORITIES: Re United Steelworkers, Local 6350, and Canadian Industries Ltd. (1966), 17 L.A.C. (Reville); Re Board of School Trustees, District 68 (Nanaimo), and Canadian Union of Public Employees, Local 606 (1976), 13 L.A.C. (2d) 274 (Lawson).

FILE NO. AA86-01-008

EMPLOYER:	Associated Beer Distributors
UNION:	Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 330
ARBITRATOR:	P. Phillips
APPEARANCES:	J.M. Christiansen - for the Employer G. Mendelson - for the Union
ISSUES:	(1) Compensation: Progressive Wage Increases 8:2320 (2) Lay Off 6:2200 (3) Duration and Loss of Seniority 6:1200
DECISION RENDERED:	January 31, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee at a brewery was laid off indefinitely after accumulating 50 days of service. He took a temporary position at a sugar beet factory, and then resumed employment with the brewery. After accumulating ten more days of service, the grievor felt that according to the collective agreement he should have received a wage increase. His wage increase was denied.

The Employer argued that the grievor had not been laid off, but had quit to take a permanent job at the sugar beet factory. When he subsequently returned to the brewery, he had to start accumulating service from scratch. He would not be entitled to the wage increase stipulated in the collective agreement until he accumulated a further 50 days of service.

The Union argued that the grievor had not quit his job at the brewery to take a permanent position elsewhere. He had informed his supervisor at the brewery that he would be taking a temporary position until he was recalled. Further, the Employer neither issued a record of employment when the grievor left work at the brewery, nor indicated in any other way that the employment relationship had ended.

AWARD: The Arbitrator concluded that, in fact, the grievor did not voluntarily quit his job to take a permanent position elsewhere. Therefore, he did not surrender his rights which flowed from his 50 days of completed service with the Employer, accumulated prior to the layoff. The grievor was awarded 50 days of seniority entitlement earned in 1984, which would entitle him to the raise stipulated in the agreement.

AUTHORITIES: Re Prince Rupert Fisherman's Co-operative Association and United Fisherman and Allied Workers' Union 19 L.A.C. (3d) p. 141.

FILE NO. AA86-01-009

EMPLOYER:	Cargill Ltd.
UNION:	Lodge No. 650, Brotherhood of Railway, Airline and Steamship Clerks, Canadian Lakehead Grain Elevator Workers
BOARD:	J.M. Chapman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer E.M. Stencer - Nominee for the Union
APPEARANCES:	W.S. Martin, Q.C. - for the Employer W. Dubrensky - for the Union
ISSUE:	Bargaining Unit Work 5:2100
DECISION RENDERED:	January 31, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Union alleged that a substantial portion of the work performed by the Control Room Supervisor (specifically the functions relating to the shipment of grain) was work of the bargaining unit. The collective agreement defined the jurisdiction of the bargaining unit to be all functions related to the "movement of grain". The Union requested that either the Supervisor be included in the bargaining unit or a person from the bargaining unit be put into the Control Room to do the work the Supervisor did.

The Employer submitted that the jurisdiction of the bargaining unit did not extend to the shipping functions. Shipping involved decision making with respect to the blending of grain and its transport route. Such decisions could be made only by management personnel. Further, the Control Room Supervisor was responsible for the supervision and control of Control Room employees and for ensuring that the movement of grain through the elevator was smooth and efficient, clearly management functions.

AWARD: The grievance was denied. The Board ruled that the parties never intended that the functions relating to the shipment of grain be included within the jurisdiction of the bargaining unit. Further, the other functions performed by the Control Room Supervisor were equivalent to those performed by a General Foreman which was a position expressly excluded from the bargaining unit.

DISSENT: E.M. Stencer - Nominee of the Union - In his proposed award, Mr. Stencer indicated that specific provisions of the collective agreement and the Control Room Operators' agreement clearly directed exclusive jurisdiction to the Union to have control of the Control Room operation so far as they pertain to the movement of grain. His contention was that the collective agreement had been violated.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-02-001

EMPLOYER:	Brittany Inn Everest Holdings
UNION:	Hotel and Restaurant Employees' and Bartenders' Union, Local 206
ARBITRATOR:	S.G. Sigurdson, Q.C.
APPEARANCES:	Not listed
ISSUES:	(1) Discipline: Discharge: Work Performance 7:3500 (2) Reasonableness of Penalty 7:4300
DECISION RENDERED:	February 7, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor was dismissed from employment as a Bartender. The Employer alleged that the grievor had failed to perform his duties in a satisfactory manner. He was inefficient behind the bar, and failed to keep the area clean. He socialized excessively, particularly with friends. He served liquor to hotel staff, contrary to hotel policy. Finally, substantial draft beer shortages had occurred during the grievor's period of employment.

The Employer further claimed that the grievor had been warned about his performance deficiencies on several occasions. When he failed to improve, the decision was made to discharge him. The grievor denied that management ever formally had discussed with him the deficiencies in his performance. He also denied any responsibility for the beer shortages.

AWARD: The Arbitrator concluded that the beer shortages played a significant role in the decision to discharge the grievor. However, there was no evidence to link the grievor to the beer shortage. Further, part of the grievor's poor work performance was attributable to a "problematic situation at the bar". In these circumstances, a discharge was too harsh of a penalty to impose.

The grievor admitted to minor infractions of Company rules. He also had been warned at least verbally of his performance deficiences, and had failed to improve. A lengthy suspension (approximately one year) was substituted for the discharge.

FILE NO. AA86-02-002

EMPLOYER:	MacMillan Bathurst Inc.
UNION:	Canadian Paperworkers' Union, Local 830
BOARD:	D. Bowman - Chairperson G.D. Parkinson - Nominee for the Employer T. Ulrich - Nominee for the Union
APPEARANCES:	W.L. Ritchie, Q.C. - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Merger of Collective Agreements (2) Credited Service for Vacation Benefits 8:3220 (3) Object of Construction: Intention of the Parties 4:2100
DECISON RENDERED:	February 18, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Two large corporations, MacMillan Bloedel and Consolidated Bathurst, merged to create MacMillan Bathurst Inc. The Consolidated Bathurst plant in St. Boniface was closed, and its employees were transferred to MacMillan Bloedel's plant on Inkster. For the purposes of vacation entitlement, it was agreed that St. Boniface employees would come under the Inkster agreement.

Under the terms of the Inkster agreement, after each five years of continuous service with the Company employees were entitled to supplementary vacation benefits. This grievance arose when some of the transferred St. Boniface employees did not receive the supplementary vacation benefit, while others did. Those who received the benefit celebrated a fifth anniversary while at Inkster.

The Union argued that all St. Boniface employees should be treated precisely as were Inkster employees, and should receive credit for St. Boniface time for the purposes of calculating supplementary vacation benefits.

The Employer submitted that nothing in the collective agreement (nor in any of the merger agreements) equated service at St. Boniface with service at Inkster. St. Boniface employees were not entitled to the supplementary vacation benefits for at least five years. It was contended further that to the extent the Company had granted transferred St. Boniface employees supplementary vacation benefits based on their prior St. Boniface service if they completed a fifth year anniversary while at Inkster, the same was a gratuitous act and not one required by the various agreements.

AWARD: The Arbitrator concluded that in the merger of the two collective agreements, the issue of supplementary vacation entitlement never was addressed. Therefore, to extend the benefits under the Inkster contract to all transferred St. Boniface employees would be to write in a clause which the parties themselves did not see fit to include. Limited relief in the form of supplementary vacation benefits was granted to those St. Boniface employees who celebrated a fifth year anniversay just prior to transferring to Inkster.

DISSENT: T. Ulrich - Nominee of the Union - The dissenting Nominee contended that there was nothing in the collective agreement, the five-party merger agreement, the vacation entitlement memorandum, and the past practice of the Company that placed a restriction on the receipt of supplementary vacation entitlement. He considered it fair that former St. Boniface employees be treated the same as Inkster employees were treated when the benefit first became available to them.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-02-003

EMPLOYER:	Burns Meats Ltd. (Brandon, Manitoba)
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	C.B. Cramer, Q.C.
APPEARANCES:	J.M. Christiansen - for the Employer C. Trigwell - for the Union
ISSUES:	(1) Compensation: Wage Guarantees 8:1200 (2) Holiday Pay 8:3100 (3) Statutes 4:2230
DECISION RENDERED:	February 20, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The Employer did not pay his employees for the Remembrance Day holiday. The Union grieved alleging a violation of Article 9 of the collective agreement, which guaranteed employees a minimum of 37 hours of pay per week.

The Employer argued that Article 9.1(g) stated that, "where the observance of a holiday other than any of the stipulated paid holidays leaves less than 137 scheduled hours in a week, the guaranteed payment shall be the number of scheduled hours available for work". No violation of the agreement had occurred.

AWARD: The Arbitrator concluded that there had been no violation of Article 9 of the agreement. However, upon examination of the contract, it was discovered that "Schedule B" provided that every employee on the payroll as of April 1 of each year was entitled to two individual paid holidays to be taken at a mutually agreeable time. It went on to provide that a holiday required by law to be observed other than those listed in the agreement shall replace the individual holiday. Therefore, all employees on record as of April 1, 1985, were entitled to payment for an individual holiday on November 11, 1985.

FILE NO. AA86-02-004

EMPLOYER:	INCO Ltd.
UNION:	United Steelworkers' of America, Local 6166
ARBITRATOR:	P.S. Teskey
APPEARANCES:	J.M. Christiansen - for the Employer D. Brown - for the Union
ISSUES:	(1) Discipline: Written Reprimand: Health and Safety 7:3621 (2) Weighing the Evidence 3:5100
DECISION RENDERED:	Feb. 24, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee of a mine received a written reprimand for failing to wear a safety lanyard when measuring an ore pass. He grieved alleging that, in fact, he was wearing his safety lanyard at the time in question. He further claimed that the action taken against him by his Foreman was motivated by ill will based on his personal characteristics.

The Company Foreman testified that the grievor was not wearing a safety lanyard, and it had been necessary to clip it to his belt. He further testified that he had had good relations with the grievor prior to this incident, and had had no difficulty working with him.

AWARD: The grievance was denied. The Arbitrator concluded upon examining the evidence presented at the hearing that the grievor had probably not been wearing a safety lanyard. Because misconduct had occurred, the disciplinary action taken against the grievor was justifiable.

AUTHORITIES: Re Sheraton Ltd. and Hotel and Club Employees' Union, Local 239 (1980) 26 L.A.C. (2d) 122; and Re Stongs Markets Ltd. and Retail Clerks' Union, Local 1518 (1982) 5 L.A.C. (3d) 438.

FILE NO. AA86-02-005

EMPLOYER:	The City of Thompson
UNION:	United Steelworkers of America, Local 8223
ARBITRATOR:	S.G. Sigurdson, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer J.A. Plaskett - for the Union
ISSUES:	(1) Senior Employee with Required Ability 6:3210 (2) Ability and Qualifications Criteria 6:3300
DECISION RENDERED:	February 28, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor applied for but was unsuccessful in obtaining the position of Storeskeeper. She felt she was qualified for the position, and, hence, was entitled to it by the seniority provisions of the collective agreement.

The City argued that seniority governed only if the applicant for a position could establish that she had the necessary qualifications for the position. The grievor lacked adequate typing skills and any kind of experience working in a parts department.

The Union contended that the Company's 50 w.p.m. typing requirement was unreasonable. Typing was only a very minor part of the job. The Union further submitted that experience in the parts department was not listed on the job bulletin as a necessary qualification.

AWARD: The grievance was dismissed. The Board concluded that the 50 w.p.m. typing requirement was a bona fide requirement for the position. Since the grievor had approximately 16 w.p.m. as measured on an objective typing test administered by the Company, she could not meet the minimum requirements for the position. Hence, she was not entitled to it.

AUTHORITIES: Palmer, Collective Agreement Arbitration in Canada (2nd ed.) (1983); and Brown and Beatty, Canadian Labour Arbitration (2nd ed.) (1984).

FILE NO. AA86-02-006

EMPLOYER:	Alphair Ventilating System Inc.
UNION:	United Steelworkers of America, Local 4226
BOARD:	P.W. Schulman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer H. McMeel - Nominee for the Union
APPEARANCES:	J.F.R. Taylor, Q.C./R. Shultz - for the Employer G. Mendelson/M. Myers, Q.C. - for the Union
ISSUES:	(1) Resignation 7:7100 (2) Notification of Absence 7:3110 (3) Reasonable Explanation of Absence 7:3112 (4) Employee's State of Mind 7:4424
DECISION RENDERED:	February 17, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor left work to attend to some personal matters, and was absent from work for three consecutive days. During the period of his absence, he did not notify the Employer as to the reason(s) for his absence. The Company invoked Article 9:07(c) of the collective agreement, which provided that a person is deemed to have quit voluntarily if absent for three consecutive days without notifying the Company. The grievor subsequently received a letter from the Company accepting the former's termination according to Article 9:07(c).

The grievance brought forth by the Union was that the Company violated the collective agreement by unreasonably and unjustly discharging the grievor from his job. The issue to be decided was whether the grievor had been discharged by the Company or whether, in fact, he had "voluntarily quit" his employment.

The Union argued that the presumption in relation to voluntary quitting was rebuttable and not conclusive; that previous similar cases resulted in reinstatement of employees; and that to enforce the provision of Article 9:07(c) was unfair in situations where employees had personal problems.

The Employer's position was that according to the collective agreement, the grievor had quit voluntarily because he was absent for three consecutive days without notification.

AWARD: The grievance was dismissed. It was ruled that the presumption in relation to quitting was conclusive rather than rebuttable. Thus, there was no ambiguity in the collective

agreement. The grievor had quit his job voluntarily, and was not discharged, because it was physically possible for the grievor to notify the Company and prevent Article 9:07(c) from operating.

DISSENT: H. McMeel - Nominee for the Union - Mr. McMeel noted the Company's position in dealing with Article 9:02(c) in the past. He cited two instances where employees had been reinstated after violating the same clause. His contention was that the grievor indeed had made a mistake due to the latter's emotional state of mind. The dissenting Nominee would have considered the period between the time the grievor received the letter from the Company and the date of the award as a suspension, and then would have reinstated the grievor in his former position with full seniority.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-03-001

EMPLOYER:	Canada Packers Inc.
UNION:	United Food and Commercial Workers' International Union, AFL-C10
BOARD:	J.M. Chapman, Q.C. - Chairperson E.W. Olson, Q.C. - Nominee for the Employer H. Matthews - Nominee for the Union
APPEARANCES:	D. Newman - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Discipline: Suspension (under 30 days) Insolent, Unco-operative Behavior, Obscene Language 7:3660 (2) Disciplinary Standards (Union Officers) 9:1530
DECISION RENDERED:	March 1, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Foreman of a sausage kitchen called a meeting of his subordinates. He informed them that in order to keep production up to Company standards, it had become necessary to begin to enforce strict adherance to Company rules concerning starting and quitting times and personal phone calls. The Shop Steward asked for, and was provided, an opportunity to address the meeting. At one point he told his fellow workers that he did not want to see anyone "busting their asses".

Subsequent to an investigation, the Shop Steward was given a five-day suspension allegedly for counselling employees to slow down or restrict production, a violation of Article 25.1 of the collective agreement.

The Shop Steward grieved the suspension, denying that in any way, shape, or form did he counsel employees to interfere with production.

AWARD: The Board concluded that given the context in which it was said, the meaning of the phrase, "I don't want to see anyone busting their asses.", at the very least was an encouragement to slow down or to restrict production. A violation of Article 25.1 occurred. Therefore, there was just cause to discipline the grievor. However, because he was considered a good employee a three-day suspension was substituted for the five-day suspension.

DISSENT: H. Matthews - Nominee of the Union - Mr. Matthews' opinion was that the grievance should have been allowed. It appeared that the grievor had been trying simply to inform employees of their rights in respect to workload. No evidence was presented to suggest that it was the grievor's intention to counsel a slowdown. Further it appeared that the Employer's decision to suspend the grievor was based on a one-sided version of events provided by the Foreman.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-03-002

EMPLOYER:	Health Sciences Centre
UNION:	International Union of Operating Engineers, Local 827
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	W.S. Gardner - for the Employer R. Tonn - for the Union
ISSUES:	(1) Discipline: Suspension (under 30 days): Insolent, Unco-operative Behaviour, Obscene Language 7:3660 (2) Insubordination 7:3600
DECISION RENDERED:	March 1, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor, a Power House Engineer, had been reprimanded and subsequently was suspended for three days for alleged insubordination. The Employer claimed that the grievor

had allowed electricians to test emergency power generators when he had been told expressly not to do so. Further, he had participated in the test, and had been responsible actually for starting the generators. Damage to the machines could have occurred. The grievor testified that he had told the electricians that the test was cancelled. They had replied that they would proceed with the test in accordance with orders from their supervisors. Because he physically could not prevent them from performing the tests, he had no choice but to allow the tests. He then had decided he may as well get some experience starting up the generators. The Employer further submitted that the grievor had the proper authority to prevent the tests.

AWARD: The Arbitrator concluded that the grievor neither sufficiently exercised his authority over the electricians to prevent the tests, nor made anything but a superficial attempt to contact his supervisors prior to allowing the tests to proceed. Therefore, he had disobeyed a clearly communicated order. Hence, the Employer was entitled to take disciplinary action against him. Given evidence of previous incidents of insubordination, the Arbitrator did not feel that a three-day suspension was excessive.

AUTHORITIES: Re Hunter Rose Co. Ltd. and Graphic Arts International Union, Local 28-B (1980) 27 L.A.C. (2d) 338; Re Resthaven Memorial Gardens and Highland Memorial Gardens and Service Employees Union, Local 204 (1981) 2 L.A.C. (3d) 146; Re Ford Motor Company of Canada Ltd. and United Automobile Workers, Local 707 (1974) 5 L.A.C. (2d) 5; and others.

FILE NO. AA86-03-003

EMPLOYER:	Abex Industries Ltd., Selkirk, Man.
UNION:	United Steelworkers of America, Local 8407
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	T. Foy - for the Employer E. Knapp - for the Union
ISSUE:	Non-disciplinary Demotion 7:3546
DECISION RENDERED:	March 16, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor alleged that he was removed from the position of Coremaker Leadhand in violation of Article 7:2 of the collective agreement, which provides a training/trial period of up to 90 days for employees moving to new positions.

The Company alleged that the grievor's performance in the job was deficient. During the six weeks the grievor was working in the position, he made constant errors in performing specific jobs, and he had difficulties with record keeping and production scheduling which adversely affected production in that and other areas of the plant. The Company further argued that Article 7:2 stipulated that if at any time during the trial period it becomes evident that the employee cannot perform the job, he may be removed.

The grievor claimed that his failure to perform satisfactorily in the position was caused by a lack of co-operation from his fellow workers.

AWARD: The Arbitrator concluded upon an examination of the evidence presented at the hearing that the grievor was experiencing difficulties in performing the job. His poor work performance was affecting production adversely in other areas of the plant. No evidence was presented to indicate that the grievor had encountered difficulties with unco-operative co-workers. Further, it appeared that the grievor never had raised the issue either with management or his union representative.

Article 7:2 clearly stated that an employee could be removed from a position if it becomes evident he cannot function completely in that position. The Arbitrator found no evidence that the decision to remove the grievor from the position was arbitrary or in bad faith. Accordingly, the grievance was dismissed.

AUTHORITIES: Brown and Beatty, Canadian Labour Arbitration, p. 425-427; and Re Sooke Forest Products Ltd. and International Wood Workers of America, Local 1-118 (1981) 3 L.A.C. (3d) 252.

FILE NO. AA86-03-004

EMPLOYER:	Flin Flon Motel
UNION:	Manitoba Food and Commercial Workers' Union, Local 832
ARBITRATOR:	J. Cooper
APPEARANCES:	D. Schaworski - for the Employer D. Primeau/J. Ahrens - for the Union
ISSUE:	Senority: Layoff 6:2200
DECISION RENDERED:	March 19, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee hired as a part-time waitress was laid off, while another employee with less seniority was retained. She grieved alleging a violation of Article 10:13 of the collective agreement, which stated:

> Unless the merit, fitness and ability of one regular part-time worker is greater than that of other regular part-time employee, preference as to available hours of work shall be given to the employee with greater seniority consistent with the availability of that employee and the employee's willingness to perform the work.

The Employer alleged that in the past the grievor had demonstrated an unwillingness and an unavailability for work. Further, she was judged to be less proficient in the job than the employee who was retained. In these circumstances (defined in 10:13), she could be laid off regardless of her seniority.

AWARD: The evidence presented at the hearing suggested that the grievor was unavailable for work on only a few occasions when she was not scheduled for work and was called in on short notice. The Arbitrator concluded that this did not demonstrate an unwillingness or an unavailability to work within the meaning of Article 10.13. Further, no evidence was presented by the Employer to prove that the "ability, fitness, and merit" of the employee retained was any greater than that of the grievor. The grievace succeeds. The grievor was compensated for the hours she would have worked had she not been laid off.

AUTHORITIES: Re Bridge and Tank Co. of Canada Ltd. and the United Steelworkers of America, Local 2537 9 L.A.C. (2d) 47.

FILE NO. AA86-03-005

EMPLOYER:	Burns Meats Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	D.G. Baizley, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer R. Tonn - for the Union
ISSUES:	(1) Discipline: Discharge: Dishonesty 7:3300 (2) Scope of Review 7:4100
DECISION RENDERED:	March, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor, an employee of a meat packing plant, was discharged for breach of trust/theft. The Employer alleged that the grievor endeavoured to obtain a quantity of top quality farmers' sausage from its plant market by attempting to pass off the sausage as less than top quality so that he could get it at a lower price. Twenty pounds of top quality farmers' sausage which had been placed in a bag reserved for inferior quality products was found in the possession of the grievor. The grievor denied any wrongdoing. He claimed to not know how the sausage had gotten into the bag.

AWARD: The Arbitrator concluded upon the presentation of evidence that an act of dishonesty had occurred. Therefore, the Company was entitled to take some disciplinary action against the grievor. However, the discharge was considered to be too harsh of a penalty to impose. The grievor did not occupy a position of trust; the goods taken were of nominal value; and the grievor was a long service employee. A five-month suspension was substituted for the discharge.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-03-006

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
ARBITRATOR:	M.H. Freedman, Q.C.
APPEARANCES:	M. Samphir - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Senior Employee with Required Ability 6:3210 (2) Trial, Training and Familiarization Periods 6:3230
DECISION RENDERED:	March 26, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor alleged that an employee with less seniority than herself was awarded the position of Assessor I, a position for which she felt she was qualified, and, hence, to which she was entitled under Article 12:3 of the collective agreement.

The Employer contended that the grievor was not qualified for the position. She lacked technical school training and/or experience in the construction trades. To a lesser extent, she lacked

knowledge of blueprints and the ability to read and interpret specifications. The grievor could not have performed all functions of an Assessor immediately upon starting the job, and the Company was under no obligation to provide training.

AWARD: The grievance was allowed. The Arbitrator concluded that the Assessor I position was an entry level junior position. The level of training and experience demanded by the Company was too high. With her experience as a Clerk in the Assessing Office and her community college courses in a directly related field, the grievor did possess the requested skill and ability to perform the job.

AUTHORITIES: Re Canadian Food and Allied Workers Union and Great Atlantic and Pacific Company of Canada Ltd. et al (1976) 76 CLLC 14,056.

FILE NO. AA86-03-007

EMPLOYER:	Flin Flon General Hospital
UNION:	Manitoba Food and Commercial Workers' Union, Local 832
ARBITRATOR:	J. Atwell
APPEARANCES:	Not Listed
ISSUES:	(1) Compensation: Progressive Wage Increases 8:2320 (2) Object of Construction: Intention of Parties 4:2100
DECISION RENDERED:	Not Stated
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor, a Housekeeping Aide, has been a regular part-time employee with Flin Flon General Hospital since November 14, 1983. She contends that she now should be paid a rate of $8.32/hour in accordance with Articles 17:01 and 17:02 and "Appendix B" of the collective agreement which stipulated that after 24 months of service an employee will be given a pay increment.

The Employer contended that the grievor was on maternity leave for eight months during the period in question. Maternity leave constituted an interruption of employment in excess of 30 days, and as a result, the pay increment would be delayed for each month the grievor was away from work. This policy was defined in Article 15 of the collective agreement which dealt with the calculation of vacation benefits.

AWARD: The grievance was allowed. No provision in the agreement stipulated the delaying of increments for employees on leave without pay, and there was no basis to conclude that it was the intention of the parties to limit the application of Articles 17:01 and 17:02 and "Appendix B" of the collective agreement in terms of the provisions of Article 15:01 dealing with vacation benefits.

FILE NO. AA86-03-008

EMPLOYER:	St. Boniface General Hospital
UNION:	Manitoba Food and Commercial Workers' Union, Local 832
ARBITRATOR:	J. Atwell
APPEARANCES:	C. Malburg - for the Employer A.R. McGregor, Q.C. - for the Union
ISSUES:	(1) Seniority: Job Posting 6:2310 (2) Senior Employee with Required Ability 6:3210 (3) Skill and Ability Requirement 6:3000 (4) Trial, Training and Familiarization 6:3230
DECISION RENDERED:	April 3, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor alleged that an employee with less seniority than himself was awarded the position of Pathology Attendant, a position for which he felt he was qualified and to which he was entitled under Article 16:02 of the collective agreement.

The Employer contended that the grievor did not have the minimum qualifications for the position. He lacked any experience in the cutting and removal of body parts from a cadaver, which was the major function associated with the position. Further, a joint Labour/Management Committee established to review the requirements for the position agreed that experience was a necessary qualification.

The Union alleged that the only qualification established through labour/management consultation was the ability to stomach the job. It was their understanding that the skills needed to perform the duties associated with the position could be picked up through on-the-job training.

The Employer submitted that under Article 16:02, an applicant for a position must have the present and immediate ability to perform the job. The Company neither was under an obligation to provide

any training for the position, nor did it ever represent to the Union that any training would be provided.

AWARD: The grievance was dismissed. The job of Pathology Attendant appeared to be a relatively skilled one. Hence, it was reasonable for the Employer to appoint an employee with the present and immediate ability to do the job. The collective agreement did not contemplate that the Employer must provide training to an applicant who wished to apply for a position but did not possess the necessary technical skills to perform it.

FILE NO. AA86-03-009

EMPLOYER:	Associated Beer Distributors Ltd.
UNION:	Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 330
BOARD:	J.M. Chapman, Q.C. - Chairperson D. Kells - Nominee for the Employer N. Thibault - Nominee for the Union
APPEARANCES:	G.D. Parkinson - for the Employer M. Myers, Q.C. - for the Union
ISSUE:	Company Rules 4:1500
DECISION RENDERED:	March 11, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Union alleged that with the current collective agreement the Employer improperly, unreasonably, and inconsistently had imposed a policy which prohibited the consumption of alcoholic beverages by employees during any part of their shift, including lunch and dinner breaks. Lunch and dinner breaks were not paid breaks. The Union argued that the Employer was entitled to exercise control over its employees only during paid working hours and within certain limits, on Employer lands and premises. That control did not extend to off duty hours or activities.

The Employer pointed out the dangers of working while under the influence of alcohol, particularly to those employed as drivers and those working around moving equipment. It was impossible to regulate the consumption of alcohol during lunch breaks to ensure that employees did not become drunk. Therefore, it was necessary to eliminate it completely. The Employer further submitted that the policy was necessary to protect its public image.

AWARD: The grievance succeeds in part. The Board concluded that the rule cannot apply to workers within the plant. If workers drink at lunch time and then report to work in an unfit condition,

the Employer was at liberty under the terms of the collective agreement to impose discipline.

However, the situation was not the same for employees employed as drivers. The Employer is entrusting its vehicles to employees, and is entitled to impose reasonable conditions on employee conduct while they have care, custody, and control of those vehicles. Further, drinking and driving is inherently dangerous and prohibited by law. Insofar as it relates to drivers and helpers, the rule was considered by the Board to be reasonable and proper.

DISSENT: D. Kells - Nominee for the Employer - In Mr. Kells' opinion, an artificial distinction was drawn between in-plant workers and drivers. He expressed concern for the safety of in-plant employees working around moving equipment, as well as pointed to the effects of alcohol on performance.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-04-001

EMPLOYER:	Canada Packers Inc.
UNION:	United Food & Commercial Workers' International Union, Local 111
BOARD:	M.H. Freedman, Q.C. - Chairperson E.W. Olson, Q.C. - Nominee for the Employer H. Matthews - Nominee for the Union
APPEARANCES:	Not Listed
ISSUE:	Assignment of Bargaining Unit Work to Non-Unit Employees 5:1400
DECISION RENDERED:	April 3, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Two collective agreements were entered into between the Employer and the Union: one covered employees at the Employer's Main Plant; and the other, referred to as a supplementary agreement, covered employees of the poultry division. Employees of the Poultry Division were not covered by the Main Plant agreement.

Negotiations for the collective agreement covering the employees of the Main Plant culminated in a strike. Prior to the strike, a Main Plant employee with 40 years seniority drove a truck for the

Poultry Division. Following the strike, the employee was assigned a city delivery job with the Main Plant, while a less senior employee from the Poultry Division took over his former inter-plant haul job. The Union alleged that the Employer wrongly had transferred work out of the bargaining unit of the Main Plant.

AWARD: The Board concluded upon examination of the evidence presented at the hearing that during the strike the Employer arranged that a particular function be carried out in another division. The Union at that time did not object to the arrangement. The situation still existed at the time the new agreement came into force at the Main Plant. The subsequent agreement negotiated for the Poultry Division explicitly listed the driving function as within the jurisdiction of the Poultry Division bargaining unit. By signing the new collective agreement, the Union acquiesced and co-operated in the transfer of the truck driving function. The grievance was dismissed.

DISSENT: H. Matthews - Nominee for the Union - Negotiators for the Main Plant bargaining unit did not participate in negotiations for the supplementary agreement covering Poultry Division workers. Therefore, they could not have acquiesced or co-operated with the Employer in transferring the truck driving job. Further, for fifteen years the truck driving job was, in practice, within the jurisdiction of the Main Plant bargaining unit, and could not be transferred out now without its consent.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-04-002

EMPLOYER:	INCO Ltd.
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	P.S. Teskey
APPEARANCES:	M. Christiansen - for the Employer D. Brown - for the Union
ISSUES:	(1) Arbitrability of Grievances: Form of the Grievance 2:3122 (2) Remedies for Improper Work Assignments 5:1500
DECISION RENDERED:	April 14, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The union alleged that a supervisor was performing the work of the bargaining unit. It requested a declaration, a cease and desist order, and damages to compensate for both the loss of union dues that would have been paid and money for the period of time during which employees should have been called in.

The Company admitted the breach of the collective agreement. However, it questioned the Arbitrator's jurisdication to hear the matter. The grievance was such that an individual grievance should have been filed under Article 20:01 of the agreement, rather than a policy grievance under Article 20:06. Because the time limits and grievance procedures under the two sections differed, there was potential for prejudice to the Company by allowing an individual grievance to be pursued as a policy grievance. The Company further argued that if the Arbitrator found the jurisdiction to hear the matter under Article 20:06, the only remedy available would be a declaration as to rights.

AWARD: The Arbitrator concluded that the grievance was arbitrable. It further concluded that damages are available in a policy grievance in an appropriate case, as is a cease and desist order. The Arbitrator ruled that the Company had violated the collective agreement. However, neither damages nor a cease and desist order were appropriate remedies in the case. There neither was evidence before the Arbitrator as to any employees on layoff or otherwise which would be sufficient to base a claim for specifying damages, nor was any evidence presented of flagrant, willful, or deliberate continuing violations of the agreement which properly would be the subject matter of a cease and desist order. The only relief available and appropriate in the circumstances was declaratory relief, and the Arbitrator declared that the Employer was in breach of the collective agreement.

AUTHORITIES: Brown and Beatty, Canadian Labour Arbitration, (1984) p. 92-94 and 61-63; and The Labour Relations Act s. 109(1).

FILE NO. AA86-04-003

EMPLOYER:	Gateway Industries Ltd.
UNION:	Retail, Wholesale and Department Store Union, Local 467
BOARD:	M.H. Freedman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer P. Moist - Nominee for the Union
APPEARANCES:	D. Kells - for the Employer R. Tonn - for the Union
ISSUE:	Duration and Loss of Seniority 6:1200
DECISION RENDERED:	April 16, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Building Products of Canada sold its operations to Gateway Industries Ltd. Its employees were given termination of employment notices, and were offered a severance package which they accepted. Building Products employees subsequently were hired by Gateway Industries Ltd. They were considered by Gateway to be "new hires", and did not carry with them into their Gateway employment the seniority status they had enjoyed with Building Products. A grievance alleging that Building Products had terminated the employment of its employees contrary to the collective agreement was initiated.

The Arbitration Board determined that the real substance of the matter was that Gateway was not recognizing the "old" seniority of Building Products employees, contrary to the successor rights provisions of The Labour Relations Act, which made the collective agreement signed with Building Products binding on Gateway and guaranteed employees continuity of employment status in the event of a sale of a business.

AWARD: The Board ruled that under the successor rights provisions of the legislation, the collective agreement signed with Building Products remained binding on Gateway Industries Ltd. Had employees not accepted a severance package from Building Products, their employment status would have continued uninterrupted by the sale of the business. Because employees did accept a severance package, they lost their status as employees for the purpose of the collective agreement, and, hence, were not entitled to protection of continuity of employment status provided by the Act. When they commenced employment with Gateway, the employees were treated rightly by Gateway as new hires. The grievance was dismissed.

DISSENT: P. Moist - Nominee for the Union - Mr. Moist felt that the majority neither considered all the relevant facts in making their determination, nor gave proper consideration to the spirit

and intent of the successor rights provisions of the The Labour Relations Act.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-04-004

EMPLOYER:	Watkins Incorporated
UNION:	Canadian Association of Industrial, Mechanical and Allied Workers, Local No. 3
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer S.G. Soronow - for the Union
ISSUES:	(1) Distribution of Work in the Bargaining Unit 5:2000 (2) Requirement of Bona Fides 5:2300 (3) Application of Seniority, Promotion, Demotion and Transfer 6:2100
DECISION RENDERED:	April 24, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee was transferred involuntarily from performing his duties as a Group 3 Shipping Lead Hand to working as a Group II employee in the Making Department. He did not suffer any loss in pay. A Group II employee with less seniority was transferred to the Shipping Lead Hand position. The senior employee grieved requesting that he be returned to his former position.

The Employer argued that due to a reduction in staff resulting from a business decline it decided to rotate the remaining staff to different positions to ensure they would be able to operate in all areas of the plant. The grievor had no experience in making. If he wished to maintain his employment with the Company in the future, he would have to be able to function in that area. The Employer further submitted that Article 20:08 of the collective agreement entitled it to carry out such rotations to facilitate the efficient performance of the work available.

The Union argued that Article 20:08 allowed rotations of employees only within the same group/classification. Article 20:07 of the collective agreement prohibited rotations between groups.

AWARDS: The Arbitrator concluded that the Employer had violated Article 20:07 of the collective agreement, which prohibited rotations between different group levels. The grievor was entitled to work as a Shipping Lead Hand when the work was

available. However, if shipping work is not available, the grievor must be prepared to work within his classification in the Making or Packaging Departments.

AUTHORITIES: Collective Agreement Arbitration in Canada p. 482; Canadian Labour Arbitration (2d) p. 224 and 231; and The Labour Relations Act (particular sections not specified).

FILE NO. AA86-04-005

EMPLOYER:	INCO Ltd.
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	M. Christiansen - for the Employer P. Down - for the Union
ISSUES:	(1) Weekly Overtime 8:2120 (2) Object of Construction: Intention of the Parties 4:2100 (3) Prior: Arbitration Awards and Judicial Decisions 4:2220
DECISION RENDERED:	April 28, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee worked Monday through Thursday for a total of 32 hours. He worked again on Saturday and Sunday. He received the overtime rate of pay for work performed on the Sunday but not on Saturday. The employee grieved alleging that he should have received overtime pay for his work on Saturday. The Union submitted that the collective agreement stipulated that overtime shall be paid for work beyond 32 hours per week.

The Employer testified that the Monday of the week in question was January 1, a statutory holiday, for which the grievor received one and one-half times his basic pay rate. According to its interpretation of the collective agreement (supported by two previous arbitration awards dealing with the same issue), those hours worked only at straight time rates were to be used in the calculation of weekly overtime. Because work on January 1 was paid at the overtime rate, it was not included as part of the grievor's regular 32 hour week. Work on Saturday completed the grievor's regular 32 hour week, beyond which overtime would be paid.

AWARD: The grievance was denied. Based on the decisions in two previous awards dealing with the same issue, the Arbitrator concluded that those hours worked only at the basic rate were to

be included by the Employer in the calculation of weekly overtime. As the grievor had not completed 32 hours at his basic pay rate during his regular work week, he was not entitled to overtime pay for his work on Saturday.

FILE NO. AA86-04-006

EMPLOYER:	Canada Packers Inc.
UNION:	United Food and Commercial Workers' International Union, Local 111
BOARD:	P.S. Teskey - Chairperson E.W. Olson - Nominee of the Employer S. Oakley - Nominee for the Union
APPEARANCES:	D. Newman - for the Employer C. Trigwel - for the Union
ISSUES:	(1) Discipline: Suspension (under 30 days): Insubordination 7:3600 (2) Provocation 7:4412
DECISION RENDERED:	April 29, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: A Foreman walked into the plant, and upon seeing an employee resting on a slab of bacon accused him of not working. An argument ensued during which time the Foreman threatened the employee with a suspension for "dogging it". The employee walked out on the supervisor claiming he had just been suspended, and defied an order from the supervisor to return to work. He subsequently was suspended for two days for insubordination. The Employer argued that the grievor's behaviour during the incident was defiant and insolent, and was just cause for discipline. If the grievor felt he was being treated unfairly by the supervisor, he should have continued working and filed a grievance pursuant to Articles 7:04 and 7:06 of the collective agreement. The Union, in defence of the grievor, submitted that the supervisor had provoked the incident.

AWARD: The Board concluded that the supervisor did provoke the grievor into the altercation. However, the grievor was partially to blame for the incident, as he chose to turn what could have been a minor momentary flare-up into a major event. A one-day suspension was substituted for the two-day suspension.

DISSENT: E.W. Olson - Nominee for the Employer - Mr. Olson felt that the Board should not have interfered with the penalty imposed by the Employer, as it could not be said that "it was unreasonably out of proportion to the particular offence in the circumstances". The grievor had had previous warnings and suspensions for

insubordination. In light of his previous record and the aggravated nature of his insubordination in this instance, a two-day suspension was justified.

AUTHORITIES: Brown and Beatty, Canadian Labour Arbitration p. 437-438; Re Newmont Mines Ltd. and Canadian Association of Industrial, Mechanical and Allied Workers, Local 22 (1982) 3 L.A.C. (3d) 396; and Re Douglas Aircraft Co. of Canada Ltd. and U.A.W. (1972) 2 L.A.C. (2d) 56, p. 76.

FILE NO. AA86-04-007

EMPLOYER:	Canadian Bronze Company, Limited
UNION:	International Molders' and Allied Workers' Union, Local 174
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer E. Witthames - for the Union
ISSUES:	(1) Seniority: Bumping 6:2330 (2) Senior Employee With Required Ability 6:3210 (3) Trial, Training, and Familiarization Periods 6:3230 (4) Examinations and Tests 6:3340
DECISION RENDERED:	April 2, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor, working as a Machine Operator and scheduled to be laid off, attempted to "bump" the Fork Lift Operator in Shipping, thus making use of the provision in the collective agreement. The grievor, who had some prior experience on a fork lift, was given a test on same to determine his skill as a Fork Lift Operator. He did not perform well according to the Company. On the basis of the test result, the Company did not provide the two-day familiarization period and the necessary instruction to do the job, because they determined that the grievor would not be operating the fork lift. The grievor was laid off as scheduled, and grieved that the Company violated Article 8:05 of the collective agreement, which allowed for "bumping" junior employees.

AWARD: The grievance failed. The Arbitrator considered whether or not the grievor and the incumbent had the same or similar skills with regard to operating a fork lift. He considered the test

which according to the Company indicated that the grievor was slower and less efficient when compared with the incumbent, but concluded that speed and efficiency necessarily did not prove the same or similar skill. Thus, he placed little weight on the result of the test. The Arbitrator agreed that a Shipping Fork Lift Operator's job is difficult and requires that the operator have a certain level of expertise. It was the conclusion of the Arbitrator that management was in the best position to judge the grievor's basic skill, and that the Company did come to the conclusion in good faith that the grievor and the incumbent did not have the same or similar skills as a Fork Lift Operator.

FILE NO. AA86-05-001

EMPLOYER:	Associated Beer Distributors Ltd.
UNION:	Canadian Union of Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 330
BOARD:	D.G. Baizley, Q.C. - Chairperson R. Simpson - Nominee for the Employer C. Trigwell - Nominee for the Union
APPEARANCES:	G.D. Parkinson - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Discipline: Discharge: Intoxicants 7:3560 (2) Reasonableness of Penalties 7:4300
DECISION RENDERED:	May 2, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor, a warehouse employee, was discharged from employment allegedly for working in an unfit condition due to the influence of alcohol. The Employer testified that all employees in the warehouse were required to operate power equipment, in particular power forklifts, to move cases of beer stacked 20 feet high. There was a very real potential for property damage and personal injury. The Employer further testified that in the past, one, two, or three suspensions were imposed for alcohol offences. However, the suspensions were not having the desired deterrent effect. It was decided that tougher penalties such as immediate discharge must be imposed. All employees had been informed prior to the incident in question that alcohol related offences could result in immediate dismissal.

AWARD: The Board concluded that discharge was too harsh a penalty to impose for a first offence of this nature. However, a six-month suspension was substituted to serve as notice to the

grievor and other Company employees that there would be much tougher monitoring and disciplining of drinking offences in that particular workplace.

DISSENT: R.A. Simpson - Nominee for the Employer - Given the seriousness of the offence; the nature of the grievor's employment, which required care and common sense; the need for the Employer to deal with what appeared to be a prevalent problem in the workplace; and the fact that the grievor neither admitted any wrongdoing nor apologized to the Company for his actions, Mr. Simpson felt that the discharge should be upheld.

FILE NO. AA86-05-002

EMPLOYER:	The City of Winnipeg
UNION:	International Association of Machinists and Aerospace Workers, Local 2589
BOARD:	M.H. Freedman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer D. Stephania - Nominee for the Union
APPEARANCES:	D. Buhr - for the Employer R. Tonn - for the Union
ISSUE:	Union Business on Company Time 9:1400
DECISION RENDERED:	May 8, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Three employees, who were chosen by their fellow Union members to represent them in their collective bargaining negotations, wished to be compensated for meetings they attended in connection with the negotiated process. The Union argued that Article 5:06 of the collective agreement, which provided for reasonable time off without loss of pay to attend to such Union functions as collective bargaining negotiations, entitled the employees to such compensation. Private meetings were considered to be part of the negotiation process.

AWARD: The Board concluded that compensation for time spent in negotiations was to be limited to face-to-face meetings. It would be too difficult for the Employer to prescibe limits on meetings conducted at its expense. To prescribe such limits, the Employer would have to enquire into the content of the private meetings.

DISSENT: D. Stephania - Nominee for the Union - Ms Stephania's point of view was that to confine the interpretation of the word "negotiation" to face-to-face meetings would give too narrow a meaning to the wording and content of Article 5:06. Likewise the

word "reasonable", as was included in the majority award, provided for flexibility in response to varying lengths of the negotiation process. The dissenting Nominee argued that the same flexibility should be applied to the time given to the Union during the course of negotiations for private meetings.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-05-003

EMPLOYER:	Manitoba Pool Elevators
UNION:	Grain Services Union
BOARD:	J.M. Chapman, Q.C. - Chairperson H. Piercy - Nominee of the Employer D. Kossick - Nomininee of the Union
APPEARANCES:	W.S. Martin, Q.C. - for the Employer H. Wagner - for the Union
ISSUES:	(1) Senior Employee with Required Ability 6:3210 (2) Scope of Arbitral Review 6:3100 (3) Ability and Qualifications Criteria 6:3300
DECISION RENDERED:	May 6, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An Employee was denied the position of Elevator Manager. He grieved arguing that he had the requisite seniority, ability, and qualifications, and should be awarded the position in accordance with Article 4:02 of the collective agreement.

The Employer questioned the grievor's ability to communicate and to deal with the public effectively, which was stated as a qualification for the job. It was pointed out that on at least one occasion the grievor had been criticized formally (by way of a performance appraisal) for his dealings with the public.

AWARD: The grievance was dismissed. The Board concluded upon examination of evidence that the grievor did lack public relations ability, which was a bona fide requirement for the position. Therefore, he was not entitled to the position.

DISSENT: D. Kossick - Nominee for the Union - The Employer appeared to place too much emphasis on one performance appraisal, which contained a negative comment about the grievor's public relations ability, when evaluating the grievor for the position. His ability to deal with the public should have been weighed and

balanced in light of his other qualifications, which were considered to be very good. The grievor should have been awarded the position of Elevator Manager.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-05-004

EMPLOYER:	St. Boniface Hospital
UNION:	Manitoba Paramedical Association
ARBITRATOR:	G.D. Parkinson
APPEARANCES:	C. Malburg/B. Luce - for the Employer K. Swan - for the Union
ISSUES:	(1) Company Rules 4:1500 (2) Object of Construction: Intention of Parties 4:2100 (3) Aids to Interpretation of Collective Agreements: Dictionaries 4:2210
DECISION RENDERED:	May 8, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The Department of Radiology, in response to an order from the Human Rights Commission to de-sex their dress code policy, implemented a change in the departmental dress code policy requiring male technologists to wear slacks of the type which would be acceptable to wear in an office.

The male technologists in the department grieved the requirement to purchase reasonable slacks arguing that: (i) they were being treated inequitably as other departments did not have this requirement; and (ii) Article 18:02 of the collective agreement stated that, "the Hospital shall provide and maintain all lab coats and special or protective work clothing which are required to be worn on duty . . . ".

AWARD: The grievance fails. The Arbitrator concluded that the change in the dress code policy was reasonable, as it was requiring only a clean and neat appearance from Hospital employees in contact with the public. The Arbitrator further concluded that the required slacks were not "special" clothing for which employees would have to be compensated under Article 18:02. The Hospital has attempted to ban only types of pants which might not be consistent with presenting a responsible demeanor to the public.

FILE NO. A86-05-005

EMPLOYER:	Burns Meats Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	W.D. Hamilton
APPEARANCES:	R. Flett, et al - for the Employer R. Tonn/D. Mose - for the Union
ISSUES:	(1) Discipline: Discharge: Intoxicants 7:3560 (2) Reasonableness of Penalty 7:4300
DECISION RENDERED:	May 13, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor was dismissed from employment when he was caught by his foreman with an alcoholic drink in his hand, which he candidly admitted he intended to consume.

The Employer argued that this was considered to be a very serious infraction of Company rules. When viewed in light of his past performance record, which included warnings for tardiness, absenteeism, and the use of hairnets, it provided sufficient cause for discharge.

The Union submitted that as the grievor admitted his wrongdoing, the Employer was entitled to impose some disciplinary penalty. However, a discharge was an over-reaction to the incident. A suspension, short of dismissal, would satisfy the legitimate interests of both the Employer and the employee.

AWARD: The Arbitrator ruled that possession of an alcoholic beverage for the purpose of consumption on Company property is an offence that meritted the imposition of a disciplinary penalty. However, a discharge was considered too harsh of a penalty to impose. Considerable weight was accorded to the facts that the grievor readily admitted his wrongdoing, that he actually did not consume the drink or encourage others to drink, and that his ability was not affected adversely by his having consumed alcohol. A two-month suspension without pay was substituted for the discharge.

AUTHORITIES: Palmer, Collective Agreement Arbitration in Canada (2nd ed.) p. 378; and Brown and Beatty, Canadian Labour Arbitration (2nd ed.) p. 429-430.

FILE NO. AA86-05-006

EMPLOYER:	The City of Winnipeg
UNION:	Winnipeg Police Association
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	M.S. Samphir/M.E. Cavet - for the Employer A.R. McGregor, Q.C./C. Timmers - for the Union
ISSUE:	Company Rules 4:1500
DECISION RENDERED:	May 20, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The Union filed a grievance opposing the implementation of a policy that required, "all uniformed members of the department assigned to specific duties such as station duty . . .", to wear name tags. The rule was alleged to be unreasonable, as it would make those officers wearing name tags potential targets for personal harrassment and bodily harm.

The Employer agreed that the harrassment issue would be significant if all police officers were required to wear name tags, but did not consider it to be a serious problem for those to whom the rule applied. Further, the rule was introduced on the assumption that members of the public would feel more comfortable dealing with officers they could address by name. The name tags would tend to personalize interaction, and the public would be less apprehensive when dealing with the police.

AWARD: The grievance succeeds. Upon examination of the evidence presented at the hearing, the Arbitrator concluded that the wearing of name tags posed a significant safety threat for the officers required to wear them. Therefore, the City's policy was considered to be unreasonable, and the requirement that name tags be worn was ordered to be withdrawn.

AUTHORITIES: KVP Co. Ltd., (1965) 16 L.A.C. 73 (Robinson) p. 85-86.

FILE NO. AA86-05-007

EMPLOYER:	The City of Winnipeg
UNION:	Winnipeg Police Association
ARBITRATOR:	L. Cherniack
APPEARANCES:	M. Samphir - for the Employer A.R. McGregor, Q.C., et al - for the Union
ISSUES:	(1) Vacation Benefits 8:3200 (2) Purpose and Entitlement 8:3210 (3) Overtime Work 8:2130 (4) Interest and Compensation
DECISION RENDERED:	May 20, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: On December 12, 1986, an award was issued upholding in part a grievance concerning a dismissal. The dismissal was upheld. However, the grievor was awarded compensation for lost wages and benefits for the period from August 27, 1986, to the date the award was issued. This award concerns the settlement of issues relating to the compensation to be paid to the grievor. The issues in dispute concerned vacation pay, overtime pay, and interest.

AWARD: The Arbitrator awarded the grievor vacation pay from May 1, 1985, to December 12, 1985. The claim for overtime from August 27, 1984, to December 12, 1985, was dismissed. The grievor further was awarded interest on compensation from June 27, 1985, to the date of payment, according to the formula for computing interest used by the Ontario Labour Relations Board.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-05-008

EMPLOYER:	Town of Selkirk
UNION:	Canadian Union of Public Employees, Local 336
ARBITRATOR:	P.S. Teskey
APPEARANCES:	D. Stewart - for the Employer R. Fifik - for the Union
ISSUES:	(1) Temporary, Casual and Part Time Employees 5:1124 (2) Compensation: Alteration of Wages 8:1400
DECISION RENDERED:	May 20, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Two employees employed as seasonal, temporary labourers by the Town of Selkirk were offered temporary work at a recreation centre. They felt they had to accept the work or lose their senority and employment pursuant to Article 302(c)(iv) of the collective agreement. For work performed at the recreation centre, each employee received the Labourer I wage rate. Two grievances were filed alleging that the employees should have been paid a Labourer II wage rate, the rate they had been receiving for work performed since completing a 90-day probationary period.

AWARD: The grievance succeeds. Article 402(b) of the collective agreement stipulated that an employee who is required temporarily to perform duties at a lower paid position shall not have his rate of pay reduced. The Arbitrator ordered that the Employer compensate the grievors at a Labourer II rate for all hours worked and paid only at the Labourer I rate.

AUTHORITIES: The Labour Relations Act, ss. 108(1), 109(1), 109(2)(e), and 69.2(2); and Re The Corporation of Burnbaby and Canadian Union of Public Employees, Local 23 (1978) 1 C.L.R.B.R. 99.

FILE NO. AA86-05-009

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
ARBITRATOR:	M.H. Freedman, Q.C.
APPEARANCES:	M. Samphir - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Arbitrability of Grievances: Collective Agreement Limitations 2:3100 (3) Ancillary Documents 4:1200
DECISION RENDERED:	May 26, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: A Commissioner, appointed under the terms of the collective agreement to study a reclassification dispute, recommended that the position in question be classified to a higher level effective March 6, 1983.

The Union grieved the decision of the Commissioner alleging that he did not have the jurisdiction to decide the commencement date of the reclassification. A policy existed (and allegedly formed part of the collective agreement) which stipulated, "upon reclassification being approved, retroactivity will be re-instituted to the first day of the quarter following the date the request is received by personnel either from the Department Head or the Union". The request for the reclassification in question was received by personnel in 1981.

The Employer argued that under the terms of the collective agreement, the Commissioner has the power to reclassify a position and to determine the essential aspects of the position including its commencement date. Further, his decision is final and binding on the parties with no recourse to arbitration. Therefore, the Union's grievance was unarbitrable.

The Employer also submitted that the policy which existed concerning the determination of the commencement date of a reclassification did not form part of the collective agreement, and could not be used to limit the power of the Commissioner to decide that particular issue.

AWARD: The Arbritator concluded upon examination of the evidence presented at the hearing that it was within the power of the Commissioner to determine the effective date of the reclassification. Further, while some sort of policy concerning

the commencement date for reclassifications did exist, it was not intended to form part of the collective agreement, and could not be used to limit the power of the Commissioner to decide the issue. As the Commissioner acted within his jurisdiction consistent with the terms of the collective agreement, his decision was final and binding. The grievance was declared unarbitrable.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-05-010

EMPLOYER:	Agassiz School Division No. 13
UNION:	Canadian Union of Public Employees, Local 1618
ARBITRATOR:	P.S. Teskey
APPEARANCES:	R. Simpson - for the Employer R. Fifik/S. Oakley/D. Chartier - for the Union
ISSUES:	(1) Discharge Distinguished 7:7000 (2) Resignation 7:7100 (3) Retirement 7:7200
DECISION RENDERED:	May 28, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee employed by the School Division as a Head Caretaker turned 65 years old in March, 1984. He assumed that the School Division had a policy of mandatory retirement at age 65. Based on this assumption, he wrote a letter to the School Board indicating his desire to continue working until December 31, 1985. His request to be kept on until December, 1985, was approved.

In October, 1985, the job of Head Caretaker was posted and filled. In November, 1985, after discovering that no such mandatory retirement policy existed within the School Division, the employee again wrote to the School Board, this time stating he had no plans to retire from his position. He subsequently was informed that based on his letter of 1984 as of February 15, 1986, he would be considered to have resigned his position. A grievance alleging unjust dismissal was initiated. The School Board argued that the grievor had not been discharged, but had resigned.

AWARD: The Arbitrator concluded that the grievor's actions were not consistent with his intention to remain in employment. He neither took reasonable steps to apprise himself of the true

situation concerning mandatory retirement before undertaking to write the first letter to the School Division, nor did he indicate to the Employer that he wished to remain in his position until after the posting and selection procedures for a new Head Caretaker were completed. The grievance was dismissed.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-05-011

EMPLOYER:	Manitoba Pool Elevators
UNION:	Grain Services Union
BOARD:	J.M. Chapman, Q.C. - Chairperson H. Piercy - Nominee for the Employer D. Kossick - Nominee for Union
APPEARANCES:	W.S. Martin, Q.C. - for the Employer H. Wagner - for the Union
ISSUES:	(1) Preliminary Objection: Arbitrability 3:2100 (2) Collective Agreement: Ancilliary Documents 4:1200
DECISION RENDERED:	May 1, 1986.
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: In January, 1985, at each of 16 elevators, the Elevator Manager Assistant was laid off. All subsequently were recalled for work in March, 1985. The Elevator Managers grieved that the decision to lay off their assistants constituted a violation of a staffing policy used to determine where help is required. The Employer argued that this particular policy did not constitute part of the current collective agreement. Therefore, the issue was not arbitrable.

AWARD: The Arbitrator concluded that while the policy may have been included as part of an earlier collective agreement, the current agreement did not make specific reference to the policy. Therefore, it could not be deemed to have been incorporated into the current agreement. The grievance was disallowed.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-05-012

EMPLOYER:	The City of Winnipeg
UNION:	Winnipeg Police Association
BOARD:	P.W. Schulman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer M. Myers, Q.C. - Nominee for the Union
APPEARANCES:	M.S. Samphir/M.E. Cavett - for the Employer A.R. McGregor, Q.C./T. Christianson - for the Union
ISSUES:	(1) Promotion: Disciplinary Records 6:3310 (2) Arbitrability: Res Judicata 1:3000
DECISION RENDERED:	May 2, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Having attained the rank of Sargeant II in the Winnipeg Police Department, the grievor aspired to the rank of Sargeant I. Promotion in the Department is determined on the basis of a ten-step procedure, ranging from written test results to seniority considerations. The grievor, to all intents and purposes, went through the promotion process, and was due for promotion on "an effective date to be announced". Prior to anything happening with respect to promotion, charges were laid against the grievor. He pleaded guilty to five of the eight charges, ranging from improper use of intoxicants to neglect of duty. The grievor was demoted to First Class Constable, and his name was omitted from subsequent promotion lists. He grieved that he had done everything necessary according to the promotion procedure to enter the rank of Sargeant I, and requested promotion to same. The Employer claimed that by virtue of the demotion the grievor had lost the status which he had achieved previously with respect to promotion. Therefore, he must start back at "square one".

AWARD: Nothing was found in the collective agreement relating to promotion whereby by virtue of having being demoted the grievor was moved out of the slot he earned through competition. It was ruled that the grievor was not entitled to promotion to Sargeant, becase he had not completed fully the promotion process. The Board of Commissioners was ordered to consider and to make a decision on the candidacy of the grievor upon the occasion of the next vacant position of Sargeant I.

DISSENT: H.G. Piercy - Nominee for the Employer - Mr. Piercy contended that the grievor was not entitled to the position of Sargeant I as of right, as the grievor had not completed the

promotion process. Further, the dissenting Nominee argued that if the Manitoba Police Commission was functus officio on January 19, 1984, when the grievor was ordered reinstated to the rank of Sargeant II, then the decision stands. If not, he noted that the majority of the Commission members' decision was that the grievor be disqualified from promotion. Mr. Piercy felt that the majority decision did not answer the question of whether the Chief of Police had any discretion of his own in matters described above. Mr. Piercy's position was that the Chief does have discretion in matters of this kind.

FILE NO. AA86-06-001

EMPLOYER:	St. Vital School Division No. 6
UNION:	Canadian Union of Public Employees, Local 730
ARBITRATOR:	P.S. Teskey
APPEARANCES:	R. Simpson - for the Employer J. Elder - for the Union
ISSUES:	(1) Senior Employee if Relatively Equal 6:3220 (2) Physical Qualifications 6:3360
DECISION RENDERED:	June 9, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Without being given an interview, an employee with considerable seniority was denied a position as a Head Caretaker. Based on a subjective evaluation of the applicants for the position, the Employer awarded the position to a less senior employee.

The Employer argued that under Article 8:02 of the collective agreement, it was entitled to choose the most qualified applicant for the position. The applicant selected had previous experience at the school where the position was available. He also had experience at both the Class 4 and Class 3 levels, whereas the grievor's experience was limited to positions classified at the fourth level. Further, in the recent past the grievor voluntarily had taken a demotion from maintenance to caretaking due to stress and pressure that had caused an ulcer. He may not have been fit to take on a level 2 head caretaking position.

AWARD: The grievance succeeds. The Arbitrator, upon examination of the evidence presented, concluded that the evaluation of the grievor's skills and abilities was done in a perfunctory manner.

He found no substantial differences between the skills and abilities of the grievor and the successfull applicant. The grievor was awarded the position.

AUTHORITIES: Re Northern Telecom Ltd. and United Automobile Workers, Local 1839 (1980) 25 L.A.C. (2nd) 379 (Fraser); and The Labour Relations Act, s. 69.2(2).

FILE NO. AA86-06-002

EMPLOYER:	Westfair Foods Ltd.
UNION:	Manitoba Food and Commercial Workers' Union, Local 832
ARBITRATOR:	D.G. Baizley
APPEARANCES:	G. Mitchell - for the Employer D.A. Primeau - for the Union
ISSUE:	Discipline: Discharge: Attendance at Work 7:3100
DECISION RENDERED:	June 17, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor, a university student, was terminated from her employment with the Employer after failing to make herself available for work on several occasions. Failing to report for scheduled shifts on October 30, 1985, and November 1, 1985, she was given a verbal warning. When she failed to report for shifts on November 7 and 8, 1985, she received a written warning. The grievor was suspended for three days after failing to report for work on four scheduled days in November, 1985. Her employment was terminated on January 20, 1986, as a result of her failure to report for work on January 16 and 27, 1986.

AWARD: Having declared herself available for work on an unrestircted basis, the Arbitrator concluded that the grievor was obliged to make herself available from Monday to Saturday, from store opening to store closing. It was the Arbitrator's decision that the Employer was justified in terminating the grievor's employment.

FILE NO. AA86-06-003

EMPLOYER:	Gateway Industries Ltd.
UNION:	Retail, Wholesale and Department Store Union, Local 467
ARBITRATOR:	P. Phillips
APPEARANCES:	R. Nugent - for the Employer D. Oswald - for the Union
ISSUES:	(1) Discipline: Discharge: Intoxicants 7:3560 (2) Standard of Review of Disciplinary Action 7:5020
DECISION RENDERED:	June 19, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee was dismissed from employment for reporting to work under the influence of alcohol and in a condition that would present a safety hazard both to himself and to his fellow workers. He grieved the dismissal arguing that he should have been disciplined through progressive disciplinary procedures.

The Employer alleged that the grievor was a probationary employee at the time of his dismissal. Therefore, he had no recourse to the grievance process (Article 6:02 of the collective agreement). The grievor had been employed by the Employer on August 26, 1985, and was laid off in November, 1985. During the layoff period, he had showed up at the plant intoxicated, and had created a disturbance. He was fired. In January, 1986, the grievor requested a second chance, and was rehired. As a new hire, he had to go through a four-month probationary period. At the time of the second incident the grievor was still a probationary employee, and the Employer was within its rights to dismiss him. The grievor denied he had been fired and then rehired.

AWARD: The grievance fails. The Arbitrator concluded from an examination of the evidence presented at the hearing that the grievor was on probation at the time of his dismissal. As a probationary employee, the Employer was within its rights under Article 6:02 of the collective agreement to dismiss him without any recourse to the grievance procedure.

FILE NO. AA86-06-004

EMPLOYER:	Gateway Industries Ltd.
UNION:	Retail, Wholesale and Department Store Union, Local 467
ARBITRATOR:	P. Phillips
APPEARANCES:	R. Nugent - for the Employer D. Oswald - for the Union
ISSUES:	(1) Discipline: Discharge: Intoxicants 7:3560 (2) Probationary Employees 7:5000 (3) Reasonableness of Penalty 7:4300
DECISION RENDERED:	June 23, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee was hired on October 2, 1985, and was laid off on November 30, 1985. He was recalled on January 21, 1986, and worked until the first or second week of May, 1986, at which time he was discharged for reporting to work late and under the influence of alcohol. He grieved the dismissal arguing that he should have been disciplined through progressive disciplinary procedures.

The Employer alleged that at the time of the dismissal the grievor had been a probationary employee, as he had not completed four consecutive months of employment with the Company as defined by Article 6:01 of the collective agreement. Therefore, he could not grieve his dismissal (Article 6:02 of the collective agreement).

The Union argued that under Article 6:01 of the collective agreement an employee simply had to have four months of service with the Company before attaining permanent status and acquiring the right to grieve a dismissal. There was no requirement under Article 6:01 that there had to be four consecutive months of employment.

AWARD: The Arbitrator concluded that a Company initiated short-term layoff did not interrupt the employment relationship. If it did, the Employer could defeat the purpose of the seniority provisions of the collective agreement by effecting the termination of probationary employees just before the probationary period ended and rehire them as beginning probationers. Therefore, the grievor had completed the requisite four-month probationary period and was entitled to grieve his dismissal.

AUTHORITIES: Re U.A.W., Local 252 and Quay-Norris Mfg. quoted in Re Mine and Exploration Equipment Workers and Canadian Longyear Ltd., L.A.C. Vol. 21, p. 226; Re Electrohome Ltd. and

International Brotherhood of Electrical Workers, Local 2345, 12 L.A.C. (2d) p. 295; and Brown and Beatty, Canadian Labour Arbitration p. 499.

FILE NO. AA86-06-005

EMPLOYER:	Burns Meats Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
BOARD:	J.M. Chapman, Q.C. - Chairperson R. Simpson - Nominee for the Employer N. Thibault - Nominee for the Union
APPEARANCES:	G.D. Parkinson - for the Employer C. Trigwell - for the Union
ISSUES:	(1) Holiday Pay 8:3100 (2) Qualifying for Holiday Pay: Qualifying Days 8:3120
DECISION RENDERED:	June 20, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee commenced employment with Burns Meats Ltd. on or about November 12, 1984. He quit on September 9, 1985. He alleged that when he quit he should have received payment for two individual holidays as defined in the collective agreement.

The Union argued that according to Article 9(1) of the collective agreement, if an employee had been working as of April 1, then such an employee was entitled to two individual holidays. These holidays were an earned and vested entitlement, which, in effect, was "banked", and which was not lost on termination.

The Employer argued that while employees acquired entitlement to an individual holiday for being on the payroll as of April 1, there was no right to payment for the holiday unless the employee was present on the day before and after the holiday (Article 9(b)). The Company submitted that because the grievor had quit his job he would not be at work the day before or the day after his holiday.

AWARD: A majority of the Board concluded that if the Union's interpretation of the agreement was adopted then the Employer could be faced with a situation where an employee hired on March 31, would work the next day (April 1), then quit shortly thereafter, and would be entitled to two individual holidays. This was an interpretation that the agreement could not bear reasonably. The grievance fails.

DISSENT: N. Thibault - Nominee for the Union. Mr. Thibault felt that Article 9(b) of the collective agreement applied to holidays defined as paid holidays only, and not to holidays defined as individual holidays. The grievance should have been allowed.

AUTHORITIES: Burns Meats Ltd. and United Food and Commercial Workers' International Union, Local 139, Ont. Board (Chaired by J.W. Samuels) Arbitration Case Heard in Toronto, Oct. 7, 1985.

FILE NO. AA86-06-006

EMPLOYER:	Town of Selkirk
UNION:	Canadian Union of Public Employees, Local 336
ARBITRATOR:	P.S. Teskey
APPEARANCES:	D. Stewart - for the Employer R. Fifik - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Applications of Estoppel 2:2220
DECISION RENDERED:	June 23, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Union alleged that contrary to the collective agreement the Employer had not been adjusting labourer pay rates from Labour I to Labour II upon the completion of a 90-day probationary period.

AWARD: The grievance succeeds. The collective agreement did not specify when progression from classification to classification occurred or the criteria by which it happened. The Arbitrator concluded that the strict legal interpretation of the collective agreement would give management the right not to progress an employee after the satisfactory completion of a probation period.

However, it was established that in collective bargaining negotiations the Union asked the Employer to abolish the Labour I rate. The Employer had replied that the Labour I rate was required for the purpose of a probationary period and starting wage. The Union withdrew its proposal. Because the Union relied on this representation made by the Employer, it would be unfair to allow the Employer to revert back to its strict legal rights.

The Arbitrator ruled that for the life of the agreement the Labour I rate shall relate to the period of time during which the employee is in the probationary period and the Labour II rate shall relate to the past probationary period.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-06-007

EMPLOYER:	International Fur Dressers and Dyers Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	E. Shewchuk - for the Employer C. Trigwell - for the Union
ISSUES:	(1) Discipline: Discharge: Theft 7:3310 (2) Discipline: Discharge: Dishonesty 7:3300
DECISION RENDERED:	June 23, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee asked if he could remove the labels from some of the chemicals used in the Employer's manufacturing process. He was told by a foreman to get a list from his supervisor. The employee subsequently was seen by a co-worker removing labels from chemical bags. The co-worker reported the incident to his supervisor. The supervisor confronted the employee, and asked for an explanation of his actions. The employee flatly denied taking the labels. He immediately was dismissed for theft and dishonesty.

Another employee, accused by the supervisor of acting as a "lookout" for his co-worker, also was discharged. Both men grieved the dismissals.

AWARD: The Arbitrator concluded that there was insufficient evidence presented at the hearing to implicate the employee accused of accessory to the theft as an actual party to the theft. He was reinstated effective immediately.

With respect to the other grievor, it was proven by the Employer that he was guilty of premeditated theft of Company property, albeit property of a nominal value. The seriousness of the grievor's misconduct was compounded by his dishonesty in refusing to admit any wrongdoing except when confronted by proof of his guilt. Therefore, the discharge was upheld.

AUTHORITIES: Re Langley Memorial Hospital and Hospital Employees' Union, Local 180 (1985) 18 L.A.C. (3d) 123; The Labour Relations Act s. 69.1; and Brown and Beatty, Canadian Labour Arbitration p. 492.

FILE NO. AA86-06-008

EMPLOYER:	Amesco (1967) Ltd.
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	M.H. Freedman, Q.C.
APPEARANCES:	D. Newman - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Progressive Wage Increases 8:2320 (2) Premium Rates and Bonuses 8:2000
DECISION RENDERED:	June 25, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: There were three different issues dealt with in this award. Each issue was dealt with separately. The first issue relates to the interpretation of the word "service" found in the wage and classification schedule of the collective agreement. The Union asserted that the word "service" meant service with the company, as this would be most consistent with the recognition of seniority as a basic concept of the agreement. The Employer argued that "service" meant within a particular classification.

The second issue relates to the rate to be paid to an employee for work performed. The grievor joined the Company in August, 1984. He transferred from the warehouse to shipping for six weeks ending August 6, 1985, and then moved to counter sales. During the entire period he worked for the Company, he received $6.05/hour. He claimed that for the period July 22, 1985, to August 6, 1985, he should have been receiving $6.60/hour, because by that time he had put in more than twelve months' service with the Company. For the period he was in counter sales, he should have been receiving $6.90/hour for the same reason.

The third grievance alleges that an employee employed as a part-time lead hand did not receive the fifty cents pay premiums specified in the collective agreement.

AWARD: The Arbitrator concluded that the word "service" as used in the wage and classification schedule meant service with the Company. The other two grievances were allowed.

AUTHORITIES: Re United Automobile Workers, Local 525, and British Motor Corp. of Canada Ltd. (1968) 19 L.A.C. 61; The Labour Relations Act, s. 75.1(7); and Premier West Peat Moss Ltd. and United Food and Commercial Workers' International Union, Local 111 (1985).

FILE NO. AA86-06-009

EMPLOYER:	The City of Winnipeg
UNION:	United Firefighters of Winnipeg, Local 867
BOARD:	D.G. Baizley, Q.C. - Chairperson G. Parkinson - Nominee for the Employer M. Myers, Q.C. - Nominee for the Union
APPEARANCES:	M. Samphir/D. Buhr - for the Employer P. Teskey/L. Castle - for the Union
ISSUES:	(1) Management Rights 4:2310 (2) Management's Duty to Act Fairly 4:2320 (3) Subsection 69.2(2) of The Labour Relations Act
DECISION RENDERED:	June 4, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: In an effort to reduce its' budget by $450,000 per year, the City eliminated 24 Driver Aide postions. An alternative that would be of no greater cost to the City, other than to eliminate the Driver Aide positions, would be to send only one pumper from a particular station in response to a fire. This was rejected by the City allegedly in the interests of safety and efficiency in firefighting.

The Union grieved the decision arguing that the elimination of the positions of the Driver Aides, who drove District Chiefs and Assistant District Chiefs to fires, negatively impacted on the safety of District Chiefs, and to a lesser extent on the firefighters generally.

AWARD: The Board concluded that the City acted unreasonably in eliminating the Driver Aide positions for District Chiefs given the negative impact of safety involved and the existance of an alternative which could achieve at least the same level of economy and efficiency in the workplace.

DISSENT: G.D. Parkinson - Nominee for the Employer. Mr. Parkinson held that at no time did the Union take the position that the deletion of pumpers would be safer, or even might be safer, than the deletion of the District Chief's drivers. The dissenting Nominee's point of view was that a system that took more pumpers out of service would create the jeopardy identified by the Union itself. Mr. Parkinson further held that the majority of the award was correct in determining that they could not interfere with the democratic process of deciding to cut the budget of the Fire Department. The award should have been left at that.

AUTHORITIES: The Labour Relations Act, s. 69.2(2).

FILE NO. AA86-06-010

EMPLOYER:	Westfair Foods Ltd.
UNION:	Manitoba Food and Commercial Workers, Local 832
ARBITRATOR:	D.G. Baizley, Q.C.
APPEARANCES:	G. Mitchell - for the Employer D.A. Primeau/P. Shawa - for the Union
ISSUES:	(1) Discipline: Discharge: Attendance at Work 7:3100 (2) Doctrine of Culminating Incident 7:4310 (3) Management Rights 4:2310
DECISION RENDERED:	June 17, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: Following her failure to attend scheduled work shifts on several different occasions, the grievor's employment was terminated. The Union and the grievor argued that under Article 18:23 of the collective agreement the penalty to be imposed for missing shifts is a loss of seniority, not a discharge.

The Employer argued that under Articles 18:02 and 11:01 of the collective agreement it had a right to dismiss an employee for repeated unauthorized absences. Further, the grievor had been warned and suspended for unauthorized absences, and at least on one occasion had been told that further absences could result in dismissal.

AWARD: The agreement reserved to the Employer the right to discipline, to suspend, or discharge employees for proper cause. Nothing in Article 18:13 of the agreement restricted the right to discipline or to discharge employees for repeated unauthorized absences that are acts of insubordination. The grievor had been given several warnings and suspensions. As well, she had been warned that further absences could lead to termination. Under the circumstances, the Employer was entitled to discharge the grievor.

AUTHORITIES: The Labour Relations Act, s. 69.

FILE NO. AA86-06-011

EMPLOYER:	Bristol Aerospace Ltd., St. James Plant
UNION:	Canadian Association of Industrial Allied and Mechanical Workers, Local No. 5
BOARD:	J.M. Chapman, Q.C. - Chairperson R. McIntosh/P. Fassey - Nominees for the Union K. Booth/B. Clark - Nominees for the Union
APPEARANCES:	None
ISSUES:	(1) Compliance with Wage Structure 5:2400 (2) Changes in Job Function 5:2410 (3) Criteria: Equal Work or Equal Skill 5:2420
DECISION DATED:	June 18, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The essence of the grievance was that the grievor sought immediate reclassification from a Sheet Metal Assembler #75 to a Sheet Metal Mechanic #39. The grievor claimed he was regularly performing the work of the higher classification.

AWARD: The grievance succeeds. Upon observing the grievor at work, the Board concluded that the grievor was performing the work of the higher classification to the extent that he could be deemed to be performing it on a regular basis. Therefore, he should be reclassified to that position as and from the date of his grievance.

AUTHORITIES: None.

FILE NO. AA86-06-012

EMPLOYER:	Bristol Aerospace Ltd., St. James Plant
UNION:	Canadian Association of Industrial Allied and Mechanical Workers, Local No. 5
BOARD:	J.M. Chapman, Q.C. - Chairperson N. Richards/P. Fassey - Nominees for the Employer B. Durant/P. Marand - Nominees for the Union
APPEARANCES:	None
ISSUES:	(1) Compliance with Wage Structure 5:2400 (2) Changes in Job Function 5:2410 (3) Criteria: Equal Work or Equal Skill 5:2420
DECISION RENDERED:	June 18, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The essence of the grievance was that the grievor sought immediate reclassification from the position of Inert Gas Welder to Welder-General #3. The grievor claimed he was performing regularly the work of the higher classification.

AWARD: The Board concluded that for a considerable amount of time the grievor had been performing the duties of only an Inert Gas Welder. Therefore, he was not entitled to the higher classification.

AUTHORITIES: None.

FILE NO. AA86-06-013

EMPLOYER:	Bristol Aerospace Ltd., St. James Plant
UNION:	Canadian Association of Industried Allied and Mechanical Workers, Local No. 5
BOARD:	J.M. Chapman, Q.C. - Chairperson B. Durant/P. Marand - Nominees for the Union N. Richards/P. Fassey - Nominess for the Employer
APPEARANCES:	None
ISSUES:	(1) Compliance with Wage Structure 5:2400 (2) Changes in Job Function 5:2410 (3) Criteria: Equal Work or Equal Skill 5:2420
DECISION RENDERED:	June 23, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The essence of the grievance was that the grievor sought immediate reclassification from the position of Inert Gas Welder #22 to Welder-General #3. He alleged that he was performing regularly the work of the higher classification.

AWARD: The Board concluded upon an examination of evidence presented at the hearing that the grievor was performing primarily the duties of an Inert Gas Welder #22. He did not perform the duties of the higher classification on a fairly consistent basis as part of his work routine. His occasional assignment to work in the higher classification did not entitle him to the classification of a Welder-General #3.

AUTHORITIES: None.

FILE NO. AA86-07-001

EMPLOYER:	MacMillan Bathurst Inc.
UNION:	Canadian Paperworkers' Union
BOARD:	D.E. Bowman - Chairperson G.D. Parkinson - Nominee for the Employer R. Malazdrewich - Nominee for the Union
APPEARANCES:	W. Ritchie, Q.C./D. Kells - for the Employer R. Tonn - for the Union
ISSUES:	(1) Limits to Arbitrability of Grievances: Time Limits 2:3128 (2) Relief Against Non-Compliance With Grievance Procedures 2:3140 (3) The Labour Relations Act, s. 109(2)(e)
DECISION RENDERED:	July 7, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievance alleged that the Employer failed to pay or refused to pay life insurance benefits to the estate of a deceased employee in accordance with the collective agreement. The Employer argued that the grievance was unarbitrable as the Union failed to carry forward the grievance within the time limits prescribed by section 27 of the collective agreement. The Union asserted that subsection 109(2)(e) of The Labour Relations Act empowered a board of arbitration to relieve against mandatory time limitations for grievance procedures. The Employer further submitted that section 27 of the collective agreement was substantive and not procedural. Therefore, the Board could not grant relief.

AWARD: The grievance was deemed unarbitrable. The Board concluded that section 27 provided a clear and unequivocal result which followed the failure to comply with the time limits prescribed by the agreement, "any grievance . . . shall be abandoned and all rights of recourse to the grievance procedures shall be at an end". Therefore, it was a substantive provision which vested rights in the Employer when applicable. As such, it ousted any jurisdiction the Board might have to invoke the discretion granted by subsection 109(2)(e) of The Labour Relations Act.

DISSENT: R. Malazdrewich - Nominee for the Union. Mr. Malazdrewich submitted that arbitration awards that allow one party to a collective agreement to put forward legalistic interpretations, and, therefore, withhold a benefit of that agreement to which the other party is entitled, subverts the intent of collective agreements and the purpose of The Labour Relations Act. Because the Union's delay was reasonable and the

delay caused absolutely no prejudice to the Employer, the Board ought to have exercised its discretion to relieve against the breach of time limits.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-07-002

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
BOARD:	M.H. Freedman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer T. Ulrich - Nominee for the Union
APPEARANCES:	M. Samphir - for the Employer R. Tonn - for the Union
ISSUES:	(1) Illness Benefits and Other Rights 8:3300 (2) Qualifying for Medical and Disability Benefits 8:3320
DECISION RENDERED:	July 4, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee who had several miscarriages became pregnant. She decided it was better not to work during this pregnancy, and obtained a medical certificate which advised that she discontinue working. She left work when she was eight months' pregnant. At that time, she was ineligible for maternity benefits. However, she was told that her sick leave and vacation benefits would carry her through until she was eligible to collect maternity benefits. She subsequently was denied sick benefits.

The Union asserted that the collective agreement stipulated that if an employee was sick or disabled such employee was entitled to be paid sick leave.

The Employer argued that the grievor was not sick or disabled, but only pregnant. Further, the medical advice given to the grievor to discontinue working was only a precautionary measure, and the medical certificate did not declare that she was sick or disabled.

AWARD: Evidence presented at the hearing by a psychiatrist suggested that at the time she decided to leave work the grievor was suffering psychologically from the fear that she may miscarry her baby again, and was disabled in terms of her ability to carry

on on a day-to-day basis. She would have undergone considerable suffering had she continued to work. The psychiatrist further testified that he would have issued a medical certificate stating the grievor was disabled and unable to work. The grievance was allowed.

AUTHORITIES: Re Simon Fraser University and Association of University and College Employees, Local 2 (1983) L.A.C. (3d) 385; and Re Hotel Dieu St. Joseph Hospital (Windsor) and Ontario Nurses' Association (1985) 20 L.A.C. (3d) 299.

FILE NO. AA86-07-003

EMPLOYER:	INCO Ltd.
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	M. Christiansen - for the Employer D. Brown, et al - for the Union
ISSUES:	(1) Overtime 5:3200 (2) Persons Normally Performing Work 5:3222
DECISION RENDERED:	July 22, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee, a Cagetender, grieved that he was denied the opportunity to work overtime on a general holiday. A Topman performed the cagetending function, allegedly in violation of Article 7:03 of the collective agreement. As well, the Union argued that requiring the Topman to operate the cage created an unsafe work situation.

AWARD: From an examination of evidence presented at the hearing, the Arbitrator concluded that the work of a Cagetender was performed only briefly on the day in question. Under Article 7:03 of the collective agreement, which states, "to the extent permitted by the requirements and efficiency of operations . . . overtime shall be allocated as evenly as possible taking into consideration seniority", the Employer was within its rights not to call in a Cagetender.

The Arbitrator also concluded that he did not have the jurisdiction to deal with the health and safety issue. It more rightly would be considered under The Workplace Safety and Health Act.

AUTHORITIES: INCO Ltd. and U.S.W.A., Local 6166, re grievance of R.E. Putkeathly, Jan. 26, 1978; INCO Ltd. and U.S.W.A., Local 6166, re grievance of K. Thompson, Sept. 30, 1980; and INCO Ltd. and U.S.W.A., Local 6166, re grievance of V. Saric, Nov. 29, 1985.

FILE NO. AA86-08-001

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
BOARD:	M.H. Freedman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer N. Thibault - Nominee for the Union
APPEARANCES:	D. Buhr - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Application of Seniority: Promotion 6:2100 (2) Senior Employee With Required Ability 6:3210 (3) Physical: Qualifications 6:3360
DECISION RENDERED:	August 25, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee was denied a promotion to the position of Steam Plant Maintenance Helper. A less senior employee was appointed to the position. The employee grieved arguing that because he met the requirements for the position and was senior to the successful applicant, he should have been awarded the position. Subsequently, the grievor was appointed to a satisfactory position, and was not seeking to displace the incumbent. The issue became one of compensation. The Union asked that the grievor be awarded compensation for any lost salary, benefits, and seniority, retroactive to the date of the appointment of the successful applicant.

The City argued that the grievor was not granted the position of Steam Plant Maintenance Helper, as he neither had a "recommendable employee performance rating", nor did he have the physical capability to handle the job, having injured his back at work on a previous occasion.

AWARD: The grievance succeeds. Evidence presented at the hearing suggested that the grievor physically was able to perform the work. Further, the performance rating in question was done without the employee's knowledge, and never was discussed with

him. The evidence presented at the hearing also suggested that the employee was, in fact, a good/satisfactory employee. He should have been awarded the position. Since he was not seeking to displace the incumbent, he was awarded compensation for lost salary, benefits, and seniority, retroactive to the date of the appointment.

DISSENT: H.G. Piercy - Nominee for the Employer. The medical evidence presented at the hearing, which was reasonably current, clearly indicated that the grievor was not physically fit for the position, and could, in fact, suffer permanent injury to his back if he attempted to perform the job. The grievance should have been dismissed.

AUTHORITIES: None.

FILE NO. AA86-08-002

EMPLOYER:	People's Co-operative Ltd.
UNION:	The Creamery Workers' Union, Local No. 1
BOARD:	N. Thibault - Chairperson W. Kardash - Nominee for the Employer C. Trigwell - Nominee for the Union
APPEARANCES:	M. Gidora - for the Employer G.A. Derwin - for the Union
ISSUE:	Terms of Settlement - Case No. 1033/85/LRA (M.L.B.)
DECISION RENDERED:	August 6, 1986
EXPEDITED ARBITRATION:	No

The arbitration proceedings concluded when after private discussion the parties advised the Board that a mutual decision had been reached on the terms for settlement of the grievance in its entirety. The details of the matter were not stated.

FILE NO. AA86-08-003

EMPLOYER:	Moose Lake Loggers
UNION:	International Woodworkers of America, Local 1-324
ARBITRATOR:	P.S. Teskey
APPEARANCES:	I. Frost - for the Employer R. Tonn - for the Union
ISSUE:	Discipline: Suspension: Dishonesty 7:3300
DECISION RENDERED:	August 28, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: After injuring himself at work, the grievor, who was employed as a Cutter and Skidder with Moose Lake Loggers, applied for and received benefits from the Workers' Compensation Board. The W.C.B. placed restrictions on the activities of the grievor to the effect he no longer could work as a Skidder Operator.

In December of 1985, the grievor was laid off. He worked for his brother to supply firewood. He was observed by a supervisor from Moose Lake Loggers operating a skidder machine. The worker was given an indefinite suspension without pay for operating a cable skidder without the permission of the W.C.B. and potentially impairing his capacity as a Skidder Operator for the Employer. The Union argued that the grievor had operated a cable skidder only for one hour as a test of his ability to perform the work.

AWARD: The grievance succeeds. The Arbitrator concluded that the grievor did not deserve any form of discipline for operating the skidder. Evidence presented at the hearing suggested that the grievor simply was testing his capacity to do the work. The Arbitrator ruled that the grievor begin employment as soon as possible, and to receive wages and benefits from the date of his suspension.

AUTHORITIES: Re Huron Steel Products, 15 L.A.C. 288 & 289 (Reville 1964); and Re Millhaven Fibres (1967), 1(A) Union-Management Arbitration Cases 328.

FILE NO. AA86-09-001

EMPLOYER:	The Winnipeg Convention Centre
UNION:	International Union of Operating Engineers, Local 827
ARBITRATOR:	D.E. Bowman, Q.C.
APPEARANCES:	W.D. Hamilton - for the Employer R. Tonn - for the Union
ISSUES:	(1) Vacation Benefits 8:3210 (2) Credited Service for Vacations 8:3220 (3) Non-Working Periods 6:1110
DECISION RENDERED:	September 2, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: Two and one-half months during which employees were away from work by reason of both a legal strike and a lockout was deducted from the time accumulation required for particular vacation benefits. It also was deducted for the purposes of the income protection clause of the collective agreement (sick pay). The Union grieved that the Employer was not entitled to view a strike or a lockout as an interruption of continuous employment for the purpose of calculating vacation benefits and sick pay.

AWARD: The Arbitrator concluded that vacation entitlement and income protection entitlement are dependent upon years of service. It is a matter of law that employment service continues during a strike or a lockout. Therefore, vacation benefits and income protection must be calculated ignoring the period of a stirke or lockout.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-09-002

EMPLOYER:	The City of Winnipeg
UNION:	The Winnipeg Association of Public Service Officers
ARBITRATOR:	M.H. Freedman, Q.C.
APPEARANCES:	M. Samphir - for the Employer D. Newman - for the Union
ISSUES:	(1) Preliminary Objections 3:2100 (2) Specific Applications of Burden of Proof: Damages, Back Pay, and Mitigation 3:2412
DECISION RENDERED:	September 19, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: This award concerns a preliminary objection. In July, 1983, the grievor initiated a grievance alleging that he had worked a considerable amount of overtime hours for which he had not received adequate compensation. The claim for overtime compensation went back to 1975.

The Employer argued that the Arbitrator lacked the jurisdiction to consider periods of time prior to July, 1983. Prior to that time, the grievor had not pursued his grievance with any diligence. At the very least, the Arbitrator lacked the jurisdiction to deal with claims which relate to periods of time prior to the grievor becoming a member of a Union some time in 1980.

AWARD: The Arbitrator ruled that any claims for compensation could not pre-date the period when the grievor became a member of the Union in 1980. He reserved the jurisdiction to deal with the matter from 1980 onward.

AUTHORITIES: The Labour Relations Act s. 109; Re Ottawa Newspaper Guild, Local 205, and Ottawa Citizen (1965) 55 D.L.R. (2d) 26; and Re Clarke Institute of Psychiatry and Ontario Nurses' Association 5 L.A.C. (3d) 155.

FILE NO. AA86-09-003

EMPLOYER:	CN Route
UNION:	Canadian Brotherhood of Railway, Transport and General Workers
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer A.R. McGregor, Q.C. - for the Union
ISSUES:	(1) Discipline: Discharge: Leave Without Permission 7:3130 (2) Doctrine of Culminating Incident 7:4310 (3) Final Incident 7:4312
DECISION RENDERED:	September 24, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was discharged from employment for leaving work without permission and for leaving the Employer short-staffed. The Employer asserted that this was a clear breach of Company rules for which the employer was entitled to impose discipline. In light of the grievor's employment record, which included warnings and suspensions for this and other related offences, discharge was an appropriate penalty to impose.

The Union asserted that the grievor did ask permission to leave, as he felt ill/fatigued, and that it was dangerous to himself and his co-workers to work in that condition. Permission was refused. Under subsection 82(1)(a) of the Canada Labour Code, which states:

> Every person employed upon or in connection with the operation of any federal work . . . shall in the course of his employment
>
> (a) take all reasonable steps to ensure his safety and the safety of his fellow employees . . .

the grievor had a right to go home.

The Employer argued that while the grievor did ask for permission to leave, he did not give his supervisor a reason for leaving. He said nothing about feeling ill or fatigued.

AWARD: Upon examination of evidence presented at the hearing, the Arbitrator concluded that the grievor, in fact, did not give his Employer a reason for leaving, and in these circumstances permission could be refused. When the grievor left work after being refused permission, he committed an offence which warranted

discipline. In light of his past employment record, discharge was a suitable penalty to impose.

AUTHORITIES: Brown & Beatty, Canadian Labour Arbitration (2nd ed.) Palmer, Collective Agreement Arbitration in Canada (2nd ed.)

FILE NO. AA86-09-004

EMPLOYER:	INCO Ltd.
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	L. Cherniack
APPEARANCES:	M. Christiansen - for the Employer R. Mayer, Q.C. - for the Union
ISSUES:	(1) Discipline: Discharge: Notification of Absence 7:3130 (2) Doctrine of Culminating Incident 7:4310 (3) Final Incident 7:4312
DECISION RENDERED:	September 29, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor was discharged for being absent without authorization on May 6, 1986. At the time of his dismissal, the grievor was in the final step (prior to discharge) of the Employer's discipline program for absenteeism. The grievor alleged that his absence from work on May 6, 1986, was not his fault. He had been drinking heavily the night before, and had been arrested and taken into custody. He was released at approximately 1:00 a.m., at which time he went home and went to bed. He did not wake up until 12:00 Noon the next day. His room mate, not knowing how important it was for him to get to work, had taken the phone off the hook, thus preventing him from receiving the wake-up calls he had arranged. As well, she had turned off his alarm clock.

AWARD: The Arbitrator concluded that the grievor could not blame anyone but himself for his absence from work. He was responsible for his actions on the evening of May 5, 1986, which led to his inability to rouse himself for work the next day. The Arbitrator further concluded that the Employer was entitled to discipline the grievor. In light of his past record for absenteeism and misconduct, discharge was an appropriate penalty to impose.

AUTHORITIES: None.

FILE NO. AA86-09-005

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
BOARD:	P.W. Schulman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer L. Marks - Nominee for the Union
APPEARANCES:	M. Samphir/M.E. Cavett - for the Employer R. Tonn - for the Union
ISSUES:	(1) Discharge: Notification of Absence 7:3110 (2) Prior Record 7:4314 (3) Employee's State of Mind 7:4424 (4) Rehabitative Potential 7:4422
DECISION RENDERED:	September 8, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor worked as a Steam Plant Maintenance Helper with the Employer. During the period of employment, he had a history of absenteeism considered by the Employer to be excessive. He was warned about the problem, and was given opportunities to correct/improve his attendance record. The grievor had encountered difficulties with alcohol and marijuana, and was granted two leaves of absence to attend rehabilitation programs. Just preceeding his dismissal, the Grievor was traumatized by some unpleasant family matters that apparently aggravated his absentee problem. Previous to dismissing the grievor, the Employer had reviewed the former's record and contemplated dismissal. Employment was terminated when the grievor failed to notify the Employer of absence from work.

After dismissal, the grievor made attempts to "put his life back together", and received professional help in that regard. The Union argued for mitigated discipline given the grievor's personal problems and his attempt at resolving them.

AWARD: On reviewing the evidence presented and the Union's request for mitigated discipline, the Board found that the Employer in the past had been compassionate toward the grievor. A majority of the Board was satisfied that given the Employer's obligation to the public and to its other employees, it would not be just and equitable to reinstate the grievor. In the result, the grievance was dismissed.

DISSENT: L. Marks - Nominee for the Union. Mr. Marks would have given the grievor another chance, and would have reinstated him to the position that he had held prior to the termination of his

employment. According to Mr. Marks, reinstatement would have been on conditions that the grievor obtain counselling from a recognized counsellor with proper academic qualifications on a regular basis for six months; and that during the six-month period should the grievor be absent from work without providing the Employer in advance a satisfactory reason for the absence, or should he cease to attend the counselling sessions, the grievor's employment then would be terminated.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-09-006

EMPLOYER:	Felec Services Incorporated
UNION:	International Brotherhood of Electrical Workers, Local 2085
ARBITRATOR:	P.W. Schulman, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer A.R. McGregor, Q.C. - for the Union
ISSUES:	(1) Discharge: Insubordination: Refusal to Follow Instructions 7:3610 (2) Vacation: Refusal to Comply With Scheduling 7:3610 (3) Work Now, Grieve Later 7:3610
DECISION RENDERED:	September 17, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor worked as a Power Plant Mechanic on the Canadian D.E.W. Line. Work usually involves a team of four persons with each working six days a week. The Company had contingency plans in place to operate a plant with a three-man crew, if necessary. All three would work seven days a week. A crew of less than three, according to the Company, creates a critical situation at the plant. The grievor and another co-worker were scheduled to leave for vacation at the same time. The latter had two years' more seniority than the grievor. Two days before the departure of the two men, the grievor was asked to cancel his travel plans because a replacement worker could not return as scheduled and the departure of both men would create a critical situation at the plant and to the whole system. The grievor, anxious to proceed with his vacation, refused to cancel his vacation, and left as scheduled. He subsequently was dismissed for insubordination. The Union argued for reinstatement claiming that the grievor's vacation was scheduled within the stipulated time as per the collective agreement, so he was entitled to proceed with his vacation. The Company argued

that insubordination could not be tolerated at the D.E.W. Line. In this case, they argued the grievor's insubordination created an emergency situation at the plant.

AWARD: The grievance failed. The Arbitrator ruled that because the replacement had not arrived as scheduled, an emergency situtation existed in the Company's opinion. Therefore, the Company acted correctly by cancelling the greivor's vacation. According to the arbitration conclusion, the grievor made it clear to the Company that the former was going "no matter what". In this case, the grievor should follow the "obey now, grieve later" principle. The Company traditionally had dealt with insubordination by dismissal, and, according to the Arbitrator, the grievor should/must have known this. The Arbitrator concluded that the grievor's conduct was dangerous to the essential purpose of the Company's operation and function.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-10-001

EMPLOYER:	ICG Utilities Greater Winnipeg Gas Company
UNION:	Energy and Chemical Union, Local 681
BOARD:	D.E. Bowman, Q.C. - Chairperson R. Whiteway - Nominee for the Employer H.D. Matthews - Nominee for the Union
APPEARANCES:	W.D Hamilton/C. Suche - for the Employer R. Pratt - for the Union
ISSUE:	Discipline: Discharge: Criminal Convictions 7:3422
DECISION RENDERED:	October 6, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was discharged from employment as a Meter Reader for being convicted of a criminal offence (sexual assault), which was inimical of the reputation, function, and interests of the Employer; for being absent from work without an authorized leave of absence; and for failing to give the Employer full disclosure of his situation. The Employer argued that each of the offences was of such a serious nature that immediate dismissal was justified. When considered together with his employment record, dismissal was the appropriate penalty to impose.

The Union submitted firstly that the discharge was a nullity, as the Employer had failed to consult with the Union prior to imposing discipline, in violation of Article 23:02 of the collective agreement. The Employer asserted that this issue never had been raised until a day or two prior to the hearing. By its conduct, the Union had waived any claim of breach of the terms of the agreement.

The Union further argued that the grievor was an employee with 16 years of service of an apparently satisfactory nature. There was no publicity given to his criminal involvement, and hence, no publicity for the Employer. As well, there were many departments in the Company where the grievor could have been employed.

AWARD: The preliminary objection of the Union was denied. Whatever merit it might have had, it had been waived by the conduct of the Union. The Board further concluded that the grievor's behaviour rendered him unable to perform his duties satisfactorily. His behaviour also had been injurious to the general reputation of the Employer and its employees. He was absent without leave, and not only had failed to fully disclose his situation to the employer, but had attempted to mislead the Company. Under the circumstances, discharge was entirely justifiable.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-10-002

EMPLOYER:	The Province of Manitoba
UNION:	The Manitoba Government Employees' Association
ARBITRATOR:	M.H. Freedman, Q.C.
APPEARANCES:	R. Cram - for the Employer R. Cannon - for the Union
ISSUES:	(1) Discipline: Suspension (under 30 days): Fighting 7:3430 (2) Provocation 7:4412
DECISION RENDERED:	October 8, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: While using a hose in a laundry room, an employee was approached by another employee who asked to use the hose. The employee using the hose refused. The other employee then attempted to grab the hose. A scuffle ensued during which one man sustained a minor injury. Both men were suspended for two days.

The employee who had been using the hose grieved his suspension, denying any wrongdoing. He argued that if the other man had not attempted to grab the hose, the incident never would have occurred. The Employer argued that the grievor should not have held the hose after the other employee had grabbed it.

AWARD: The Arbitrator concluded that as the grievor was using the hose to do his work, it was properly in his possession. The other employee should not have attempted to grab it. If he had not, the incident never would have occurred. Therefore, there was no basis for imposing any discipline on the grievor.

AUTHORITIES: Re General Bakeries Ltd. and Baker, Confectionary and Tobacco Workers' International Union, Local 264, 21 L.A.C. (3d) 155.

FILE NO. AA86-10-003

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
BOARD:	M.H. Freedman, Q.C. - Chairperson H.G. Piercy - Nominee for the Employer D. Atkinson - Nominee for the Union
APPEARANCES:	M. Samphir -for the Employer R. Tonn - for the Union
ISSUES:	(1) Application of Seniority: Promotion 6:2100 (2) Senior Employee with Required Ability 6:3120 (3) Trial: Training and Familiarization Periods 6:3230
DECISION RENDERED:	October 9, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was denied a promotion to Skilled Labourer (Coal Handler, as required). The position was awarded to a less senior applicant. The grievor alleged that because he met the requirements for the position and was senior to the successful applicant, under Article 12 of the collective agreement he should have been awarded the position. The Employer argued that the grievor did not possess an essential qualification of the position. He presently was not capable of operating a bulldozer and front-end loader. The Union asserted that the grievor had the ability to learn to use the machines. The Employer further submitted that there was no requirement under the collective

agreement that a training period be offered to an applicant who wishes to obtain a job.

AWARD: The Board concluded that the requirement to be able to presently operate a bulldozer and front-end loader was reasonable. Because the grievor did not possess this qualification, he was not entitled to the positon.

DISSENT: D. Atkinson - Nominee for the Union. No reasons were given.

AUTHORITIES: None.

FILE NO. AA86-10-004

EMPLOYER:	INCO Ltd.
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	J.F. Atwell
APPEARANCES:	J.M. Christiansen - for the Employer M.B. McGrath - for the Union
ISSUE:	Overtime 8:2100
DECISION RENDERED:	July 3, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: An employee who was employed as a Furnace Operator (job class 18) at a rate of $15.83/hour volunteered to work overtime on Saturday, January 18, 1986, as a Conveyorman (job class 6). For the work he performed, he received overtime pay at the rate applicable to a Conveyorman (job class 6). He grieved alleging that according to Articles 7:02 and 8:01 of the collective agreement, he was entitled to be paid overtime at a rate applicable to his regular classification.

The Employer argued that according to Articles 7:02 and 8:01 of the collective agreement the grievor was to be paid at the rate applicable to the classification in which the work was performed. The Employer further asserted that it was established Company policy and practice to pay overtime at a rate applicable to the classification in which the work was done.

AWARD: The Artibrator concluded upon an examination of the collective agreement that unless an employee is assigned to work overtime in a job classification that is lower than his own, he is entitled to receive overtime only at the rate applicable to the classification in which overtime work is performed.

AUTHORITIES: None.

FILE NO. AA86-10-005

EMPLOYER:	Winnipeg School Division No. 1
UNION:	Winnipeg Teachers' Association
BOARD:	D.G. Baizley, Q.C. - Chairperson Nominee for the Employer - Not Stated L. Cherniack - Nominee for the Union
APPEARANCES:	G.D. Parkinson - for the Employer M. Myers, Q.C. - for the Union
ISSUE:	Discipline: Discharge: Leave of Absence 7:3120
DECISION RENDERED:	August, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor, a teacher, wished to take a three-week leave of absence in December, 1985, to travel to India for the purpose of professional development. The Employer denied permission to take the leave of absence as its policy was not to grant leaves of absence during the Christmas season except for compassionate reasons. The teacher was warned further that if she were to follow through with her planned trip without aurhorization, she could be deemed to have left her position as a teacher, and her position possibly could be terminated. The grievor took the trip. Upon her return, she was suspended without pay, and subsequently discharged. The Employer argued that the conscious refusal to carry out their directions amounted to insubordination, which was just cause for discipline, and in this case, discharge. The Union argued that while there was just cause for discipline, discharge was too harsh of a penalty to impose. There had been no irreparable damage to the employment relationship as a result of the grievor's conduct.

AWARD: The Board concluded that the Employer's policy not to grant leaves immediately preceding or following Christmas breaks was reasonable. The policy was made known to the grievor. Moreover, the grievor was warned of the possible consequences of her refusal to abide by the Employer's decision. Discharge in this circumstance was not an unreasonable penalty to impose.

DISSENT: L. Cherniack - Nominee for the Union. Mr. Cherniack felt that the Employer's policy was applied reasonably to persons seeking extra time off only for personal pleasure, not to persons who requested leave for the purpose of professional development. Further, because the grievor had a good ten-year employment

record, her actions were not so bad as to make it impossible for her to go back to the class room. She acknowledged her mistake, and less severe penalties such as suspension without pay were available. The grievor should not have been discharged.

AUTHORITIES: Re United Electrical, Radio and Machine Workers of America, Local 512, and Anchor Cap and Closure Corporation of Canada Ltd. (1949) 1 L.A.C. 222; and The Public Schools Act, s. 92(5) C.C.S.M. Cap.

FILE NO. AA86-10-006

EMPLOYER:	Manitoba Forestry Resources Limited
UNION:	International Woodworkers of America, Local 1-324
ARBITRATOR:	M.H. Freedman, Q.C.
APPEARANCES:	S.G. Sigurdson, Q.C. - for the Employer R. Tonn - for the Union
ISSUES:	(1) Pension, Insurance, and Welfare Plans 4:1400 (2) Qualifying for Medical and Disability Benefits 8:3320 (3) Ancillary Documents 4:1200
DECISION RENDERED:	October 8, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: On June 25, 1982, the grievor suffered a serious accident, and as a consequence he lost a leg. The accident was not connected with his employment. He was denied long-term disability benefits by his Employer's insurer on the grounds that he had not met the eligibility requirements. He alleged that he did meet the eligibility requirements and that he was entitled to claim his long-term disability benefits under the collective agreement. The Employer argued that this was a dispute between the grievor and the insurance company. They had discharged their obligation to the employees by simply providing a health and welfare plan.

AWARD: The grievance succeeds. The Arbitrator concluded that the grievor met the eligibility requirements of the long-term disability plan, and that he was entitled to receive the benefits described in "Schedule C" as provided under Article 15 of the collective agreement. The Arbitrator ordered that long-term disability benefits be provided to the grievor.

AUTHORITIES: Palmer, Collective Agreement Arbitration in Canada (2nd ed.) p. 572 & 559; Air-Care Limited v. United Steelworkers of America (1974) 4 D.L.R. (3d) 467; Re Caland Ore Co., Ltd. and United Steelworkers, Local 5855, 45 L.A.C. (2d) 169; and Re Andres Wines (B.C.) Ltd. and United Brewery Workers, Local 300, 30 L.A.C. (2d) 259.

FILE NO. AA86-10-007

EMPLOYER:	Pritchard Engineering Company Limited
UNION:	International Molders and Allied Workers' Union, Local 174
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	Y.M. Henteleff - for the Employer E. Witthames - for the Union
ISSUES:	(1) Health and Safety 7:3621 (2) Refusal to Follow Instructions 7:3610 (3) Work Performance 7:3500 (4) Discipline and Discharge Procedures 7:2000
DECISION RENDERED:	October 22, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was dismissed from employment for allegedly failing to comply with Company safety regulations and for poor productivity and absenteeism. The Employer contended that the grievor had unsafe working practices regarding the use and the operating knowledge of the suction fan hoists. The Employer further contended that the grievor's work performance and productivity had been continuously deteriorating, that he had refused to upgrade his job skills, and that absenteeism was a problem.

The Union argued that in order for the Employer to claim a breach in compliance with safety regulations or an environment of unsafe working conditions, the Employer must show that there had been an actual risk of hazard created by the grievor's actions. Further, the Union argued that the Employer had not shown evidence of either poor productivity or absenteeism.

AWARD: The Arbitrator concluded that the grievor had not complied with the Employer's safety regulations, which had been established as a result of The Workplace Safety and Health Act. The grievor showed a blatant disregard for the regulations, and, therefore, was in breach of the safety regulations.

With regard to the issue of poor work performance or productivity, the Arbitrator concluded that the grievor did not and did not want to keep current and maintain the qualifications of his trade. Therefore, the Employer's standards for work performance which were deemed reasonable were unable to be met by the grievor. Absenteeism was not established.

The Arbitrator ruled that although the penalty of termination was reasonable in this case, a more reasonable notice period of six weeks or thirty working days should have been given. The Employer was ordered to pay the grievor an additional twenty days of severance pay at the same rate as he had been earning at the date of termination.

AUTHORITIES: Palmer, Collective Agreement Arbitration in Canada, (2nd ed.) p. 416 & 420; Simmons v. The Government of Manitoba (1982) 1 W.W.R. 140; and Heustis v. New Brunswick Electric Power Commission (1979) 98 D.L.R. (3d) 622.

FILE NO. AA86-10-008

EMPLOYER:	The Town of Neepawa
UNION:	Canadian Union of Public Employees, Local 1735
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	R. Cummings - for the Employer C. Carlson - for the Union
ISSUES:	(1) Non-Unit Employment 6:1120 (2) Application of Seniority: Job Posting 6:2310
DECISION RENDERED:	October 22, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievors alleged that an employee from outside the bargaining unit with no seniority was awarded a full-time position as a Water Treatment Plant Operator in violation of Article 701 of the collective agreement.

The Company argued that neither of the grievors were considered to be permanent employees having seniority, that neither of the employees were qualified for the position, and that seniority was only one of the considerations and not the most paramount in the hiring of the successful candidate.

AWARD: The grievance succeeds in part. The Arbitrator concluded that one of the grievors had the requisite ability and seniority and should be awarded the position. The Arbitrator ruled that the grievor immediately be instated in the position, and that he receive the commensurate salary for same from the date the position was awarded to the employee outside of the bargaining unit.

With respect to the situation of the other grievor, the Arbitrator concluded that although he had seniority, the grievor did not have the requisite ability for the position. This part of the grievance was disallowed.

AUTHORITIES: Brown and Beatty, Canadian Labour Arbitration, p. 298 & 299; Carrothers, Labour Arbitration in Canada, p. 47, 79, & 80; Palmer, Collective Agreement Arbitration in Canada (2nd ed.); Bell and Snelling v. Lever Brothers Ltd. (1932) L.A.C. 161, 101 L.J.K.B. 129; and Tung-Sol of Canada Ltd. (1964), 15 L.A.C. 161.

FILE NO. AA86-10-009

EMPLOYER:	Felec Services Inc.
UNION:	International Brotherhood of Electrical Workers, Local 1541
ARBITRATOR:	S.G. Sigurdson, Q.C.
APPEARANCES:	Not Stated
ISSUES:	(1) Insubordination 7:3600 (2) Health and Safety 7:3621
DECISION RENDERED:	October, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was suspended and subsequently was discharged for insubordination. He refused a direct order to assist in the construction of a steel tank. He believed he would be involved in the construction of a large steel tank which would require the use of a step ladder. The use of a step ladder was of great concern to the grievor, as his significantly overweight condition put him in excess of the specified safety limits for the use of such ladders. A grievance subsequently was filed arguing that suspension and dismissal was unwarranted, as a danger to the grievor's health and safety was involved in the construction of the tank.

The Employer argued that the grievor failed to raise his concern with regard to his health and safety both at the time of the initial refusal and at the subsequent meeting. As a result of the grievor's silence, he was mistakenly under the impression that the tank, the construction of which he was asked to participate, was a small tank as opposed to a large one that did not involve the use of a step ladder.

AWARD: The Arbitrator found the grievor to be insubordinate. Failure by the grievor to communicate his concern of safety to the Employer was concluded to be a flagrant act of disobedience. However, the Arbitrator ruled that dismissal was not an appropriate penalty in this circumstance. The Employer was to reinstate the grievor immediately, which constituted a period of suspension in excess of one year from the time of his dismissal.

AUTHORITIES: D. Baizley, Q.C, in Felec Services Incorporated and International Brotherhood of Electrical Workers, Local 2085, July 16, 1981.

FILE NO. AA86-10-010

EMPLOYER:	Manitoba Hydro
UNION:	Canadian Union of Public Employees, Local 998
BOARD:	P.W. Schulman, Q.C. - Chairperson R. Simpson - Nominee for the Employer J. Peterson - Nominee for the Union
APPEARANCES:	G.D. Parkinson - for the Employer R. Tonn - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Job Posting 5:2520 (3) Management Rights 4:2310
DECISION RENDERED:	October 20, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: A Technical Assistant I position became vacant on February 14, 1986, and was not posted until some four and one-half months later. Normally, on a position becoming vacant, it is reviewed by management. If in the Employer's opinion the position still is required, it is posted a month or so after it first becomes vacant. The collective agreement expressly did not set out a time limit for posting an employment circular. However, Article 24.1 stated that:

> when a complement position is created or becomes vacant and is required to be filled, it will be advertised by means of an Employment Circular . . .

The Employer deferred posting the position because it wanted to streamline filling the Technical Assistant I position with filling a supervisory position that also was vacant.

The Union sought a declaration that the Employer breached a provision of the collective Agreement by deferring posting of the Technical Assistant I position until June 23, 1986.

AWARD: The Board did not agree that the job should be posted on February 26, 1986, as the Union contended, but found that by delaying the posting until June 23, 1986, the Employer had breached its obligation to post the position within a reasonable time pursuant to the implied requirement of the collective agreement. Thus, the grievance succeeded, but only in part.

AUTHORITIES: None.

FILE NO. AA86-11-001

EMPLOYER:	INCO Limited, Manitoba Division
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	P.S. Teskey
APPEARANCES:	M. Christiansen - for the Employer D. Brown - for the Union
ISSUES:	(1) Application of Seniority 6:2000 (2) Overtime 8:2100 (3) Object of Construction: Intention of Parties 4:2100
DECISION RENDERED:	November 13, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor alleged that he was denied the opportunity to work overtime, which is a violation of Article 7:03 of the collective Agreement (distribution of overtime).

The Union asserted that the grievor should have been given the opportunity to work two overtime shifts of eight hours, which was performed by an employee less senior than the grievor. The Union and grievor also contended that the ratio of hours at the relevant time was more than two to one in favor of the other employee.

The Employer argued that the grievor had received similar opportunities to work overtime just prior to this event, and that the distribution of overtime hours was justifiable. The Employer also contended that the overtime work assigned to an employee other than the grievor was reasonable and within the references of Article 7:03.

AWARD: The grievance was denied. The Arbitrator concluded that due to the flexibility built into the wording of Article 7:03, the Employer was justified in the decision it made with regard to the assigning of overtime hours. The Arbitrator ruled that no compensation should be ordered.

AUTHORITIES: G.C. MacLean, Q.C., Arbitrator, in Inco Ltd. v. United Steelworkers of America, Local 6166, June, 1985.

FILE NO. AA86-11-002

EMPLOYER:	Duck Mountain School Division #34
UNION:	Canadian Union of Public Employees, Local 2834
ARBITRATOR:	J.M. Cooper
APPEARANCES:	C. Wallis et al - for the Employer W. Smith et al - for the Union
ISSUES:	(1) Senior Employee if Relatively Equal 6:3220 (2) Education and Experience 6:3320 (3) Examinations and Tests 6:3340
DECISION RENDERED:	November 20, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The employee worked as a Teacher's Aide for the School Division. She brought a grievance against the Employer with respect to its hiring another person, who previously was not an employee of the Employer, to fill a secretarial position for which the grievor had applied. The grievance was based on seniority in terms of years of service accumulated by the grievor, as well as the assertion that she had the requisite qualifications and abilities to perform the duties for the position.

The Union contended that the Employer had violated subsection 69.2 of The Labour Relations Act by failing to give due consideration to the grievor in the selection process for the position in question.

The Employer countered in its argument that the provisions of the collective agreement relating to seniority, when read together with the "management's rights" clause therein, gave the Employer the unfettered discretion to hire the person it believed was best suited for the vacant position.

The matter proceeded to arbitration pursuant to the provisions of subsection 113.5 of The Labour Relations Act, which provides for expedited arbitration.

AWARD: In light of the evidence adduced and the submissions made with respect to the wording of the applicable provisions of the collective agreement, and in particular the seniority provisions, the Arbitrator concluded that the seniority clause in question was of the hybrid variety, and called for consideration of matters of seniority, as well as competitive and relative qualifications. The Arbitrator further found that in the particular circumstances of this case, the Employer failed to take into consideration the matter of the grievor's seniority as one of the elements in its decision, and failed to properly conduct a typing test given to the grievor (and administered in the course of the competition).

Therefore, the Arbitrator concluded that in this matter the Employer did not exercise its discretion reasonably, fairly, and in keeping with the collective agreement and the deemed fairness provisions of The Labour Relations Act. However, as seniority was not the sole relevant criteria, the matter was referred back to the Employer for a new determination based on relevant criteria which would include a reliable assessment of the relative typing skills of the candidates.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-11-003

EMPLOYER:	The City of Winnipeg
UNION:	Canadian Union of Public Employees, Local 500
BOARD:	J.M. Chapman, Q.C. - Chairperson G.D. Parkinson - for the Employer C. Trigwell - for the Union
APPEARANCES:	M. Samphir/M.E. Cavett - for the Employer R. Tonn - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Call In Pay 8:3400 (3) Notice of Lay Off 6:2320 (4) Object of Construction: Intention of Parties 4:2100
DECISION RENDERED:	November, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Union brought forward a policy grievance based on a number of individual grievances dealing with the Employer's seasonal employees' positions and their status in situations when such employees are sent home due to inclement weather. The issues concerned entitlement to reporting pay and eligibility to exercise bumping rights if, in fact, the deprivation of work was a "lay-off". The Board was asked by the parties to make a forward speaking declaration in relation to the issues presented by the policy grievance.

AWARD: In the face of considerable authorities presented, the Board recognized the duty to interpret the collective agreement in a reasonable manner, to give reference to all applicable words, and to give them their plain and simple meaning.

With respect to the issue of lay-off, the Board noted that sending home an employee during a period of inclement weather or an equipment breakdown might constitute a lay-off. However, it was not necessary for the Board to make that determination. An employee sent home for reasons of inclement weather did not reflect any conscious decision of the Employer to reduce its workforce. Thus, in the circumstance and in consideration of the relevant provisions of the collective agreement, the Board considered it unreasonable to require the Employer to exercise all of the seniority provisions within the short period of time of one shift or one day. Whether or not a deprivation of work for a shift or a day constituted a lay-off, nevertheless, the Employer was not required to permit the exercise of seniority rights within that narrow time frame. However, if the deprivation of work

continued for one day or one shift after the day or shift that was interrupted because of inclement weather or machinery breakdown, any regular seasonal employee would be deemed to be laid off at the end of the additional day or shift, and then could exercise bumping rights under the collective agreement.

With respect to the issue of reporting pay in situations where employees were advised not to report for work because of inclement weather, etc., the Board concluded that in view of the Employer's requirement that employees be available for every scheduled work day it was the Employer's responsibility to notify the employees if they were not to report for work. However, if such notifications was received within a short period of time before the commencement of the employee's shift, the employee was entitled to be compensated for that time in accordance with the colective agreement.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-11-004

EMPLOYER:	INCO Limited
UNION:	United Steelworkers of America, Local 6166
ARBITRATOR:	J.M. Chapman, Q.C.
APPEARANCES:	M. Christiansen - for the Employer B. McGrath - for the Union
ISSUES:	(1) Overtime 5:3200 (2) Object of Construction: Intention of Parties 4:2100 (3) Aids to Interpretation of Collective Agreements 4:2200
DECISION RENDERED:	November 27, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor alleged that the Employer failed to pay him at his normal salary rate while performing voluntary overtime work of another position. The grievor was classified as a Convertor Operator, Class 17, but had worked on an overtime basis as a Plugger Runner, Class 5, which carries with it a lesser hourly rate of pay. The Union and the grievor contend that the grievor was entitled to be paid the higher rate of pay for work performed during the eight-hour overtime shift as stipulated by sections 7:01 and 8:07 of the collective agreement.

The Employer argued that as a result of a memorandum dated November 1, 1985, which stated that employees who voluntarily worked overtime would be paid one and one-half times the rate for the work performed during the overtime, the grievor was not entitled to be paid at his normal rate. The grievor voluntarily had performed the duties of a classification with a lower rate of pay. Therefore, he would be paid at that rate.

AWARD: Upon examination of the evidence presented at the hearing and in the collective agreement, the Arbitrator concluded that any employee volunteering to do overtime work must be prepared to do it at the rate at which it is offered. The Arbitrator ruled that the grievor need not be compensated for the higher rate of pay while voluntarily performing the duties of a classification with lesser pay. The grievance was disallowed.

AUTHORITIES: Brown and Beatty, Canadian Labour Arbitration (2nd ed.) p. 14 - 17; Labour Arbitration in Canada, p. 47, 79, & 80; Bell and Smelling v. Lever Brothers Ltd. (1932) L.A.C. 161, 101 L.J.K.B. 129; and INCO Ltd v. United Steelworkers of America, Local 6166 (1986) M.L.R.A. 284.

FILE NO. AA86-11-005

EMPLOYER:	Deer Lodge Centre
UNION:	Public Service Alliance of Canada
BOARD:	P.W. Schulman, Q.C. - Chairperson R. Whiteway - Nominee for the Employer J. McNevin - Nominee for the Union
APPEARANCES:	D. Landry - for the Union G.D. Parkinson/J. Youngman - for the Employer
ISSUES:	(1) Overtime Work 8:2130 (2) Part-Time Employee 5:1124 (3) Object of Construction: Intenion of Parties 4:2100
DECISION RENDERED:	November 26, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: As a part-time Nurse's Aide at the Centre, the grievor had occasion to work time in excess of four hours and thirty-nine minutes a day, as specified in her agreement with the Employer. She was paid straight time, and grieved improper payment of overtime. The Board referred to the relevant sections of the collective agreement, as follows:

Article 16: Overtime shall be time worked in excess of the daily and bi-weekly hours of work as specified in Article 15 . . .

Article 15:01: Regular hours of work for all full-time employees . . . shall be

(i) seven and three-quarters (7 3/4) consecutive hours per day excluding meal periods, and

(ii) an average of seventy-seven and one-half (77 1/2) hours per bi-weekly pay period.

According to past practice at the Centre, part-time workers received premium pay in excess of time worked according to the above schedule. The essential problem in this case was to decide whether part-time employees like the grievor had to work time exceeding the hours spelled out in Article 15:01 to receive premium payment, or whether they need work only in excess of the hours spelled out in individual agreements.

AWARD: The Board considered the Employer's long-standing practice of paying overtime to part-time workers according to Article 15:01, and a majority accepted this as the correct interpretation of the section. It was concluded that agreement regarding hours of work specified for part-time workers guaranteed a minimum number of hours, but did not create an entitlement to premium pay for overtime. The grievance was dismissed.

DISSENT: J. McNevin - Nominee for the Union. Mr. McNevin held that because of the parties' reluctance to specify hours of work for part-time employees, the contract between the Employer and the employees became the hours of work. Therefore, overtime worked in excess of daily and bi-weekly hours of work as specified in Article 15:00 was the agreed upon hours of work. He felt that there was no other construction that could be made on the wording of the collective agreement.

AUTHORITIES: Re Garfunkel v. Day (1951) 2 D.L.C. 551; and Galan v. Alevno (1950) 3 D.L.R. 9.

FILE NO. AA86-11-006

EMPLOYER:	Felec Services Inc.
UNION:	International Brotherhood of Electrical Workers, Local 1541
ARBITRATOR:	P.W. Schulman, Q.C.
APPEARANCES:	G. Parkinson/J. Youngman - for the Employer A.R. McGregor, Q.C./L. Diamond - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Change in Job Function 5:2410 (3) Express Prohibitions in Agreement 5:2200
DECISION RENDERED:	November 26, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The Employer operates 21 early warning stations at the Canadian D.E.W. Line. On duty are various mechanics classified as follows: H-Mechanic, H-1 Mechanic, J-Mechanic, and J-1 Mechanic. An H-Mechanic operates and maintains vehicles on auxillary sites, and an H-1 Mechanic works in a main station power house. A J-Mechanic operates a power plant at an auxillary site and some work on main sites, which are outside the plant. Occasionally some J-Mechanics are appointed as Sector J-Mechanics. They move from site to site, but rarely go into a power plant. The J-1 Mechanic is essentially an electrician, while the H-1 Mechanic is essentially a mechanic.

The Union alleged that the Employer was training J-Mechanics for operating and maintaining main power plants. As such, the former violated Article 18 of the collective agreement. The Union brought forth a policy grievance claiming that a change in classification had been effected by the Employer. As such, wage rates and the purpose of the change should have been discussed with the Union. The Union had not been notified.

The Employer claimed that all that had happened was that sector J-Mechanics were given some additional training, and that a change in location was not a change in classification. The issue to be decided was whether or not in the circumstances described above it had been proven that the Employer had shown a desire to establish, or that it had been established, or that the Union had considered that the Employer had established a new or changed occupational classification within the bargaining unit.

AWARD: By providing a sector J-Mechanic with additional training and by permitting him to assume a full function in a main power plant, the Arbitrator found that, in essence, the Employer had trained a mechanic to perform a substantial part of the function of an electrician. Thus, according to the Arbitrator, the Employer had expressed a desire to establish a changed occupational classification within the bargaining unit.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-12-001

EMPLOYER:	River East School Division No. 9
UNION:	River East Teachers' Association No. 9 of The Manitoba Teachers' Society
BOARD:	P.S. Teskey - Chairperson G.D. Parkinson - Nominee of the Employer A.R. McGregor, Q.C. - Nominee of the Union
APPEARANCES:	R.A. Simpson - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Classification 3:2414 (2) Preliminary Objection 3:2100 (3) Criteria: Equal Work or Equal Skill 5:2420 (4) Educational or Experimental Increments 8:2330
DECISION RENDERED:	December 11, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The individual grievor and the Union brought grievances against the Employer on the grounds that the Superintendent of the School Division had misinterpreted, and/or misapplied, and/or violated Article 9(3) of the collective agreement by exercising unreasonably and in a discriminatory fashion his discretion of breach and his direction to grant increment credits to the grievor.

In response, the Employer countered that the Board had no jurisdiction to review a management decision regarding this particular section of the collective agreement, insofar as it exercised an abosolute discretion regarding the granting of increment credits.

The Board reviewed the evidence regarding the background of the grievor and other witnesses which was submitted on behalf of both the Union and the Employer.

The key issue concerned the question of whether the Board possessed the power to review the discretion exercised by the Employer regarding the matter at hand. As a result of a review of the relevant authorities, the Board concluded that it was within its function to review the criteria and the process at which the decision regarding the grant of increment credits was arrived, such descretion to be exercised in a reasonable and fair manner. In this regard, the Employer's decision making was to be assessed against the requirement to act for business reasons and the requirement not to single out any employee or group of employees for special treatment that cannot be justified in terms of real benefit to the Employer. Therefore, if the Employer acted beyond these parameters, the results of actions taken would be beyond the scope of authority under the collective agreement.

In this particular case, in arriving at the decision to deny any additional increments to the grievor, the Employer in substance did not rely upon considerations relating to all the elements critical to the exercise of discretion for the granting of increment credits. In particular, the question of assessment of the grievor's training or supervisory experience was not addressed or given proper consideration by the Employer. Rather, new and changing criteria was put forward in order to achieve the desired result.

AWARD: As the collective agreement made it clear that the discretion was intended to be exercised by the Superintendent of the School Division, and that it would be inappropriate for the Board to substitute its judgment for his own, the matter was ordered remitted back to the Superintendent or his designate for reconsideration.

It is noted that the Nominee for the Union concurred with the Chairperson's award, insofar as it concluded that consideration should be given to the grievor's request, but would have gone further, and in the circumstances would have ordered that the grievor ought to have been placed at the next increment level.

DISSENT: G.D. Parkinson - Nominee for the Employer. Mr. Parkinson dissented noting that it did not matter whether appropriate consideration to supervisory experience or training was given. In his view, the relevant provision of the collective agreement did not require that any credit be given for a supervisory component or trade experience, but only permitted the Employer to consider giving credit for such experience if it wished to do so.

AUTHORITIES: Re United Parcel Service Canada Ltd. and Teamsters Union, Local 141, 29 L.A.C. (2nd) 202 Burkett p. 213.

FILE NO. AA86-12-002

EMPLOYER:	Government of Manitoba
UNION:	The Manitoba Government Employees' Association
BOARD:	M.H. Freedman, Q.C. - Chairperson E.W. Olson, Q.C. - Nominee for the Employer L. Cherniack - Nominee for the Union
APPEARANCES:	S. Smith - for the Employer B. Havelock - for the Union
ISSUES:	(1) Credited Service For Vacations 8:3220 (2) Non-Unit Employment 6:1120 (3) Management Rights 4:2310
DECISION RENDERED:	December 11, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor alleged that she was denied credit of contract service toward vacation entitlement after competing for and winning a permanent position as a civil servant in September, 1977. She previously had been employed for a period of one and one-half years on a contract basis.

The grievor and Union contend that as a result of others in the department being given credit for their contract service under the terms of the collective agreement, the grievor also was entitled to receive the same.

The Employer argued that although others in the department had been allowed credit of contract service, this had been possible through a Management Committee policy allowing the conversion of certain employees from contract status to term or regular status. The Management Committee policy came into effect in 1978, and was not intended to have, nor did it have, a retroactive effect.

AWARD: The grievance was denied. The Board concluded that the Management Committee policy allowing credit of contract service upon conversion of status came into effect after the entry of the grievor into the Civil Service. The policy was not retroactive. Therefore, the Board ruled that no credit of contract service toward vacation entitlement would be forthcoming.

DISSENT: L. Cherniack - Nominee for the Union. Mr. Cherniack held that the grievor was not an independent contractor, but was an employee of the Government hired outside the Civil Service, who provided service to the Manitoba Government while under contract. He believed that the collective agreement seemed to

provide that the grievor be credited for her service. According to Mr. Cherniack, the issue was not whether the grievor was entitled to certain benefits, but to how much benefit she was entitled.

AUTHORITIES: Re Barber-Ellis of Canada Ltd. and United Automobile Workers, Local 397, 11 L.A.C. (2nd) 280; and The Manitoba Government Employees' Association and The Manitoba Labour Board, et al. (unreported - Feb. 14, 1978).

FILE NO. AA86-12-003

EMPLOYER:	Carnation Foods Limited
UNION:	United Food and Commercial Workers' International Union, Local 111
ARBITRATOR:	J. Chapman, Q.C.
APPEARANCES:	R. Cooke - for the Employer R. Tonn - Counsel for the Union
ISSUES:	(1) Standard of Proof - Criminal Misconduct 7:2500 (2) Theft 7:3310 (3) Penalty 7:3314
DECISION RENDERED:	December 22, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor alleged that he had been suspended unjustly for theft occurring on leased premises. The Employer contended that the grievor had been observed driving out of the Company's leased premises with some used lumber in the back of his pick-up truck. Shortly after the incident the grievor was confronted by the owner of the lumber and the owner of the leased premises and allegedly had admitted to taking the lumber. The grievor asserted that the lumber in the back of the truck was his own, and that it had been in the truck for one or two weeks prior to the said incident.

The Union argued that the owner of the lumber could not prove that he had lost any lumber or that lumber had been stolen, but only that his lumber was similar to that in the possession of the grievor.

AWARD: The grievance was allowed. The Arbitrator concluded that the Company did not satisfy to the burden of proof which rests on an Employer in this kind of case. The Arbitrator ruled that the grievor be paid the monies he would have earned had he not been

suspended. He further ruled that although the grievance requested, "the grievor be made whole in all respects," the Employer need not feel obligated to reinstate the grievor in his former position.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-12-004

EMPLOYER:	Winnipeg School Division No. 1
UNION:	Winnipeg Teachers' Association
BOARD:	D.E. Bowman, Q.C. - Chairperson R. Simpson - Nominee of the Employer G. McKinnon - Nominee of the Union
APPEARANCES:	G.D. Parkinson/J.Youngman - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Policy Grievance 2:3124 (2) Secondary Sources of Jurisdiction: Statutes 2:2100 (3) Applications of Estoppel 2:2220
DECISION RENDERED:	December 23, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: This was a policy grievance initiated by the Union alleging a misinterpretation and/or violation of section 5.7 of the "Code of Rules and Regulations" of the collective agreement dealing with sabbatical leave regulations. The section states that sabbatical leave for study or travel with part salary may be granted to teachers who have completed ten years of service. The section further states that no more than two percent of the full-time teaching staff of the division may be on sabbatical leave in any school year.

The Union was grieving a recommendation issued by the Employer that prohibited sabbatical leaves for the 1986-87 school year. It contended that by issuing such a recommendation the Employer had misinterpreted and had violated section 5.7.

The Employer asserted that as a result of inadequate provincial government funding and other budgetary priorities it was impossible to grant sabbatical leave to any staff for the school year in question. They also contended that granting sabbatical leave is at the discretion of the School Division as is stated in subsection 48(5) of The Public Schools Act, and that the

collective agreement does no more than to establish a machinery for the exercise of that discretion.

AWARD: The grievance was denied. The Board concurred with the argument put forth by the Employer. It ruled that granting or refusing sabbatical leaves is a matter of discretion vested in the Employer, and that in this particular case there existed no evidence on which to find that discretion was improperly exercised.

AUTHORITIES: Many authorities were cited in the arbitration.

FILE NO. AA86-12-005

EMPLOYER:	Federal Pioneer Limited
UNION:	United Steelworkers of America, Local 4297
BOARD:	J.M. Chapman, Q.C. - Chairperson J. Gibson - Nominee for the Employer D. Atkinson - Nominee for the Union
APPEARANCES:	R.P. Sokalski - for the Employer G. Mendelsen - for the Union
ISSUES:	(1) Notification of Absence 7:3110 (2) Reasonable Explanation of Absence 7:3112 (3) Unauthorized Absence: Abrogration of Seniority Rights 7:3114 (4) Leave of Absence 7:3120
DECISION RENDERED:	December 30, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: An employee returned from his authorized leave of absence almost one month late allegedly due to back injury. Although he had tried to inform his Employer of his predicament by means of telex, the telex was not addressed to the specific attention of the proper party, which resulted in the Employer not receiving any notification or reasons for absence. Upon return to work, the employee was dismissed from employment for failure to report for work without proper cause on a regularly scheduled shift after an authorized leave of absence. A grievance asserting unjust discharge was initiated. The grievor contended that he had notified the Employer of his extended absence by telexes, that he had not terminated his employment voluntarily, and that sickness constituted proper cause for failure to report to work. The Company disagreed, and argued that notice of absence was not given

properly either to the foreman or to the personnel department as described in subsection 8.5(d) of the collective agreement, which could be cause for termination. The Employer also questioned the validity of the grievor's medical report.

AWARD: The grievance succeeds in part. The Board concluded that because the grievor did not report for work on his regularly sheduled shift after an authorized leave of absence as he should have done, some disciplinary action was warranted. However, due to the grievor's long period of employment and generally good record, dismissal was considered too harsh of a penalty. The Board found the grievor to have some proper cause for failing to report to work, and ordered that reinstatement of the grievor without any loss in seniority for purposes of computing vacation benefits.

DISSENT: D. Atkinson - Nominee of the Union. Mr. Atkinson did not concur in part with the award. His dissention was with respect to the amount of compensation that he felt should be paid to the grievor.

AUTHORITIES: Re Budd Automative Company of Canada Limited and United Automobile Workers, Local 1451, 24 L.A.C. (2d) 12; and Brown and Beatty, Canadian Labour Arbitration (2nd ed.).

FILE NO. AA86-12-006

EMPLOYER:	Selkirk and District General Hospital
UNION:	Canadian Union of Public Employees, Local 1601
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	D. Newman - for the Employer G. Mendelson - for the Union
ISSUES:	(1) Intoxicants 7:3560 (2) Discipline: Discharge Procedures 7:2000
DECISION RENDERED:	December 30, 1986
EXPEDITED ARBITRATION:	Yes

CIRCUMSTANCES: The grievor alleged that he had been dismissed from employment without just cause. The grievor was found inhaling nitrous oxide, and as a result his employment was terminated instantly by his supervisor. The Employer argued that by becoming intoxicated on the job the grievor rendered himself incapable of performing his job as an Emergency Medical Assistant.

AWARD: The grievance succeeds in part. The Arbitrator concluded that although the grievor had committed an extremely serious misconduct by his recognizing the seriousness of his actions, coupled with his excellent work record, the grievor would be capable of learning from his mistakes. The Arbitrator ruled that dismissal was too harsh of a penalty and that a six-month suspension without pay or benefits would be substituted.

FILE NO. AA86-12-007

EMPLOYER:	Felec Services Incorporated
UNION:	International Brotherhood of Electrical Workers, Local 2085
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	G.D. Parkinson - for the Employer A.R. McGregor, Q.C. - for the Union
ISSUES:	(1) Discharge: Insubordination 7:3600 (2) Refusal to Follow Instructions 7:3610 (3) Application of Principle, Work Now, Grieve Later 7:3610
DECISION RENDERED:	December 9, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The grievor was dismissed from his employment for alleged insubordination after he refused to follow an order from his supervisor. The Company's position was that each person "pull his own weight" to ensure a harmonious and productive undertaking at the site, and so, dismisal was the appropriate discipline.

The grievor worked as a Power Utility Mechanic, and was preparing for a C.P.E.T. inspection by the United States Air Force as part of a contratual agreement with the Company. He was given an order by his supervisor to move and install some wardrobes. According to the grievor, he considered the order to have been given in an authoritarian manner and not related to duties forming part of his job description. He refused to follow the order, and was dismissed.

AWARD: The Arbitrator concluded that the circumstances reflected a "work now, grieve later" situation. However, the grievor, who had not worked for a year, was ordered reinstated, but without compensation or increase in seniority up to the date of his reinstatement. Further, he would not be required to work at a site supervised by his former supervisor. In reaching its decision the Arbitrator considered that the grievor was provoked

by the Supervisor's authoritarian behaviour; that the grievor was insubordinate, but had a positive work performance record; and that the grievor's action did not affect the prime purpose of the Company's undertaking.

AUTHORITIES: Numerous authorities were cited in the arbitration.

FILE NO. AA86-12-008

EMPLOYER:	Headingley Correctional Institution
UNION:	The Manitoba Government Employees' Association
ARBITRATOR:	G.C. MacLean, Q.C.
APPEARANCES:	G. Mitchell/J. Palamar - for the Employer M. Myers, Q.C. - for the Union
ISSUES:	(1) Arbitrability: Delay 2:3210 (2) Time Limits 2:3128
DECISION RENDERED:	December 27, 1986
EXPEDITED ARBITRATION:	No

CIRCUMSTANCES: The proceeding in essence dealt with arguments regarding whether or not a matter relating to a grievance filed by the Union should be heard. The grievor had been dismissed allegedly for causing bodily harm to a prisoner. The Union complained that the dismissal was without just cause.

More than 19 months had elapsed since the Union last had indicated to the Employer its intention to proceed with the grievance. The lengthy delay violated time limit requirements for proceeding with grievances as stipulated in the collective agreement. The issue to be decided was whether or not the time limit clause as set out in the collective agreement should be upheld or should be waived and an extension granted to the Union by the Arbitrator.

The Employer argued that the Union's lengthy delay had amounted to abandonment of the grievance, and so, should not be heard. In addition, it claimed that alteration of the time limit requirement would amount to a modification of the collective agreement. The Union invoked subsection 109(2)(c) of The Labour Relations Act, which provides an Arbitrator with the power to waive time requirements upon his discretion.

AWARD: The Arbitrator ruled in favour of the Union by deciding to hear the merits of the grievance, thus waiving the time requirement provision. In reaching this decision, the length of

the delay, the nature of the grievance, the intention of the parties, the point at which the delay arose, and whether the non-offending party had been prejudiced by the delay, was considered.

AUTHORITIES: Numerous authorities were cited in the arbitration.

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